EL PASO COUNTY

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ANDY LATHEN (VICE CHAIR)

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DEVELOPMENT SERVICES DEPARTMENT
MAX L ROTHSCHILD P.E. DIRECTOR

TO: **Board of County Commissioners**
Dennis Hisey, Chair

FROM: **Mark Gebhart, Deputy Director, LDC Administrator** mg
Max Rothschild, P. E. Development Services Director

RE: **LDC-14-1 Land Development Code Amendment**
Amendment to Sections 5.2.2, Table 5-1, Table 5-3 and definitions of the Land Development Code

Commissioner District: **All**

Planning Commission Hearing Date	05/20/2014
Board of County Commissioners Hearing Date	06/17/2014

EXECUTIVE SUMMARY

A request by El Paso County Development Services Department to amend Chapter 5.2.2 Table 5-1, Table 5-3, and definitions of the El Paso County Land Development Code (2013) to provide for group living facilities for handicapped or disabled persons, in accordance with the provisions of the Fair Housing Act Amendments of 1988, the Americans with Disabilities Act, and the Rehabilitation Act, as well as related changes to definitions and other conforming amendments.

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A. **PLANNING COMMISSION SUMMARY**

Request Heard: May 20, 2014, as a regular item

Recommendation: Approval, subject to the conditions and notations. A copy of the Planning Commission Resolution is included as an attachment

Waiver Recommendation: N/A

Vote: 3 to 2 with Planning Commission Members Egbert and Gioia in opposition

Vote Rationale: See Minutes Attached

Legal Notice: *Published in Shopper Press May 28, 2014*

B. **APPLICABLE RESOLUTIONS: See attached**

C. **BACKGROUND**

Purpose for Amending the Land Development Code

The proposed amendments are intended to address issues which have occurred during the administration of the Land Development Code ("Code" or "LDC") regarding Group Homes and to ensure compliance with the requirements of the Fair Housing Act Amendments of 1988 ("FHAA"), 42 U.S.C. § 3601, *et seq.*, the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*, and the Rehabilitation Act of 1973 ("Rehabilitation Act"), 29 U.S.C. § 701 *et seq.* Specifically, the proposed amendments are based on representations made by the County Attorney's Office, at the direction of the Board of County Commissioners ("BOCC" or "Board"), to the U. S. Department of Justice ("DOJ") in response to DOJ's investigation into a complaint filed by Courage to Change Recovery Ranch ("CCRR") with the Department of Housing and Urban Development ("HUD") regarding the BOCC's denial of CCRR's application for a Use Subject to Special Review Permit ("special use") on November 8, 2012 (see Letter from DOJ dated November 12, 2013, attached hereto and Letter from the County Attorney's Office dated January 29, 2014, attached hereto). After discussions with the DOJ, legal review of the County's regulations in light of the above federal regulations and prevailing case law, and after briefing the Board regarding the same, based on direction from the Board, modifications to the Code are necessary to bring the County into compliance with the law, specifically as it relates to equal housing opportunities for handicapped or disabled persons.

In summary, the proposed amendments will modify the definitions of Group Homes, adjust the occupancy limits upward to maximums that 1) should be accommodating to persons with handicaps or disabilities, and 2) be legally defensible for the County. The amendments remove the requirement for a Special Use Permit for lower occupancy limits and maintain the requirement for a Special Use Permit for such Group Homes above those upper occupancy limits, and revise the use standards for Group Homes in § 5.2.2, LDC. Also, in 2009, in response to a 2008 appeal of a zoning interpretation, the Code was amended to include Rehabilitation Facility and provide that such a facility was a special use in many zone districts; however, specific standards were not developed. The proposed amendments will revise the zone districts into which a Rehabilitation Facility may locate. Finally, the proposed amendments will eliminate the Adult Care Home use as that will now be covered in the amendments to the Group Home uses.

Legal Basis

The DOJ is investigating the zoning and land use practices of the County pursuant to the FHAA; the FHAA, ADA, and Rehabilitation Act all relate to this matter. The FHAA prohibits discrimination in housing on the basis of handicap or familial status. "Handicap" is defined broadly by 42 USC § 3602(h), to include:

- "A physical or mental impairment which substantially limits one or more of a person's major life activities;
- A record of having such an impairment; or
- Being regarded as having such impairment...but such term does not include current, illegal use of or addiction to a controlled substance."

"Handicap" has the same legal meaning as the term "disability." The stated legislative intent of Congress in enacting the FHAA is to "extend the principle of equal housing opportunity to handicapped persons and end discrimination against the handicapped in the provision of housing based on prejudice, stereotypes, and ignorance" to promote "the goal of independent living" and Congresses' "commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream." 1988 U.S. Code Cong. & Admin. News at pp. 2174 & 2179.

Title II of the ADA specifically applies to local governments like the County. It provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Case law and federal guidance documents indicate that "services, programs, or activities" mean all of the operations of a local government, and specifically, regulations and actions in land use and zoning matters. While the ADA does not include an accommodation requirement, the Attorney General's implementing regulation does impose on the County the duty to reasonably accommodate the disabled: "A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7).

The Rehabilitation Act applies to organizations that receive federal funds, and since the County receives federal funds, it is covered by the Act. Section 504(a) of the Act provides that "[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . ." 29 U.S.C. § 794(a). The Act does not contain an accommodation requirement, but the U.S. Supreme Court in *Alexander v. Choate*, 469 U.S. 287, 105 S.Ct. 712, 83 L.Ed.2d 661 (1985) found a duty to accommodate, and several federal appellate courts ". . . have adopted the view that the Rehabilitation Act requires public entities to modify federally assisted programs if such a modification is necessary to ensure that the disabled have equal access to the benefits of that program." *Wisconsin Community Services, Inc. v. City of Milwaukee*, 465 F.3d 737, 748 (7th Cir. 2006)(citing examples from other Circuit Courts of Appeals). The Court goes on to state a corollary principle from the *Choate* case that ". . . the Rehabilitation Act helps disabled individuals obtain access to benefits only when they would have difficulty obtaining those benefits 'by reason of' their

disabilities, and not because of some quality that they share generally with the public." *Id.*, *citing Henrietta D. v. Bloomberg*, 331 F.3d 261, 276-79 (2d Cir. 2003). The benefits as related to application of the County's land use regulations would be the ability to obtain housing through a zoning approval.

The recent case of *St. Paul Sober Living, LLC v. Board of County Com'rs*, No. CIV.A.11-cv-00303-RBJ-MEH, 2013 WL 5303484 (D.Colo. Sept. 17, 2013) from Garfield County illustrates the need to amend the LDC regarding group homes for handicapped or disabled persons. In that case, a group home for up to 10 persons recovering from substance abuse that had operated without incident for some 5 years became the subject of complaints by neighbors when they learned of the home's existence in their wooded, sparsely populated single-family zoned neighborhood. The County responded by notifying the Plaintiff home they had to obtain a special use permit and request that the zoning code be amended to allow the use in the residential district. Plaintiff instead requested reasonable accommodations including treating the home as a single-family use. The County did not respond and instead filed a lawsuit to prohibit the use. The jury in the federal district court awarded a verdict for damages in the amount of $400,000 for discrimination and retaliation by the County, and when last reported, the Court was in process of deciding the claims for attorney fees in favor of the Plaintiff between approximately $204,000 - $513,000.

Recovering (not currently using) drug addicts and alcoholics are considered to be handicapped under the FHAA itself, by its legislative history, case law decided under the Act, the ADA and the Rehabilitation Act (which latter two statutes have been interpreted to contain a similar standard on this issue), and the federal regulations implementing the Act at 24 CFR 100.201(a)(2). As indicated above, these Acts apply to local government actions, and local governments are required to make "reasonable accommodation" to address the needs created by the handicap in affording such individuals the same opportunity to housing as those who are without disabilities. The proposed Code changes are designed to make an appropriate reasonable accommodation by removing what might be determined by a court to be disparate treatment of the handicapped or disabled by an intent to discriminate based on the current wording of the Group Home definitions and the Special Use Permit process that is required for group homes for the handicapped or disabled but not for other familial-type living arrangements, while providing certain operating standards for homes of this nature.

Recently the Code has been amended to remove the distinction between the small and large day care home, increasing the limit in a home day care to a twelve (12) child maximum as an allowed accessory residential use, and defer the specific number of children authorized to the Colorado Department of Human Services based upon their regulatory standards. A similar change for group homes is proposed by staff. In practice, the building code and the fire code establish occupancy standards which govern the ability to convert an existing residence to a group home. The proposed staff revisions would allow for handicapped or disabled persons with up to 12 persons (excluding care providers and staff) as an allowed use by right in all residential zone districts, but such a group home with 13 or more persons will require Special Use approval. The Planning Commission recommended revision would bring this number to 8 as an allowed use.

The changes proposed include:

1) Revise definitions as shown
2) Revise Chapter 5.2.2 as shown

3) Revise Table 5-3 as shown
4) Modify Use Table 5-1 to delete Rehabilitation Facilities from the Agricultural and Residential Districts but retaining the Special Use requirement in RM-12 and RM-30 multifamily zoning districts
5) Modify Use Table 5-1 to change Rehabilitation Facilities from a Special Use to an Allowed Use in the Commercial and M zoning districts
6) Modify Use Table 5-1 to delete Adult Care Home

D. APPROVAL CRITERIA

The statutory role of the Planning Commission and Board of County Commissioners is identified below:

30-28-116. Regulations may be amended.

From time to time the board of county commissioners may amend the number, shape, boundaries, or area of any district, or any regulation of or within such district, or any other provisions of the zoning resolution. Any such amendment shall not be made or become effective unless the same has been proposed by or is first submitted for the approval, disapproval, or suggestions of the county planning commission. If disapproved by such commission within thirty days after such submission, such amendment to become effective, shall receive the favorable vote of not less than a majority of the entire membership of the board of county commissioners. Before finally adopting any such amendment, the board of county commissioners shall hold a public hearing thereon, and at least fourteen days' notice of the time and place of such hearing shall be given by at least one publication in a newspaper of general circulation in the county.

E. PUBLIC COMMENT AND NOTICE

The Planning Commission hearing for Code Amendment was advertised in Shoppers Press on May 7, 2014. The Legal Notice for the Board of County Commissioners hearing was done on May 28, 2014 in Shopper Press.

F. ATTACHMENTS

Proposed Changes to the Land Development Code (Planning Commission recommended version)
Department of Justice letter dated November 12, 2013
County Attorney letter dated January 29, 2014
Department of Justice background information
Statutory Reference CRS 30-28-115
Regional Building Department occupancy information
Planning Commission Minutes (05-20-2014)
Planning Commission Handouts
Planning Commission Resolution
Board of County Commissioners Resolution

(Changes from current LDC are highlighted)

~~**Adult Care Home**~~

~~A County-certified residential facility for the 24-hour care of no more than 15 residents in a non-medical facility for disabled adults, 18 years of age or over, who do not require 24-hour medical care and who are able to perform, with or without assistance, most activities of daily living. *(Deleted originally)*~~

Family

An individual, or 2 or more persons related by blood, marriage, adoption, or as guardian and ward, or a group of not more than 5 persons, excluding servants, who are not so related, living together in a dwelling unit. A family shall not include more than one person required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S., as amended, unless related by blood, marriage or adoption, or in foster care.

Comment [MG1]: Modification at Planning Commission

Rehabilitation Facility

An institutional use-type facility, and not a group home, whether public, quasi-public, not-for-profit, providing accommodation, treatment and medical care for patients suffering from alcohol or drug-related illness.

Group Home

A home intended to provide a normal residential family setting for certain unrelated groups of people and limited to group homes for persons with mental illness, group homes for developmentally disabled persons, group homes for the aged, and group homes for handicapped or disabled persons.

Group Home for Handicapped or Disabled Persons

A group home for persons with mental or physical impairments which substantially limit one or more major life activities and including such additional necessary persons required for the care and supervision of the permitted number of handicapped or disabled persons. "Handicap" and "disability" have the same legal meaning. A person with a disability is any person who has a physical or mental impairment that substantially limits one of more major life activities; has a record of such impairment; or is regarded as having such an impairment. A physical or mental impairment includes, but is not limited to, hearing, visual, and mobility impairments, alcoholism, drug addiction, mental illness, mental retardation, learning disability, head injury, chronic fatigue, HIV infection, AIDS, and AIDS Related Complex. The term "major life activity" may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. Group homes for handicapped or disabled persons, particularly as they relate to recovering (not currently using) alcoholics and persons with drug addictions, may also be known as sober living arrangements.

Group Home for the Aged (including Assisted Living Residences)

A group home for persons who are 60 years of age or older, do not need nursing facilities or skilled and intermediate care facilities, and who desire to live in normal residential surroundings. The criteria, requirements, and restrictions for group homes for the aged shall be those prescribed by C.R.S. §30-28-115(2) (b) (except for distance separations) and in this Code. Group homes for the aged include assisted living residences as defined in C.R.S. §25-27-102 (1.3). "Assisted living residence" means a residential facility that makes available to three (3) or more adults not related to the owner of such facility, either directly or indirectly through an agreement with the resident, room and board and at least the following services: personal services; protective oversight; social care due to impaired capacity to live independently; and regular supervision that shall be available on a twenty-four-hour basis, but not to the extent that regular twenty-four-hour medical or nursing care is required. The term "assisted living

residence" does not include any facility licensed in this state as a residential care facility for individuals with developmental disabilities, or any individual residential support services that are excluded from licensure requirements pursuant to rules adopted by the Department of Public Health and Environment.

Group Home for Developmentally Disabled Persons (including Intellectually and Developmentally Disabled Persons)
A State-licensed group home for persons with developmental disabilities or intellectual and developmental disabilities, as those terms are defined in C.R.S. §§ 27-10.5-102(11)(a) and 25.5-10-202(26)(a). "Developmental disability" has the same meaning as " intellectual and developmental disability." The criteria, requirements, and restrictions for group homes for developmentally disabled persons shall be those prescribed by C.R.S. §§ 30-28-115(2)(a), §27-10.5-109, and 25.5-10-214, and any regulations implemented by the Department of Public Health and Environment, the Department of Health Care Policy and Financing, and the Department of Human Services in support of this statutory provision, and elsewhere in this Code. This includes a community residential home as defined in C.R.S. § 25.5-10-202(5).

Group Home for Persons with Mental Illness
A State-licensed group home for persons with mental illness, as that term is defined in C.R.S. §27-65-102(14). The criteria, requirements, and restrictions for group homes for persons with mental illness shall be those prescribed by C.R.S. §30-28-115(2) (b.5) (except for separation requirements) and elsewhere in this Code. The term group home for persons with mental illness shall not include any facility licensed as a residential child care facility.

5.2.2. Child Care Centers, Family Care Homes, and Group Homes
The following standards apply, subject to the provisions and limitations of the County and State Department of Human Services and Department of Public Health and Environment.

(A) Separation Requirements

No family care homes, child care centers, or group homes, excluding group homes for handicapped or disabled persons, shall be located on an adjacent lot or parcel or within 500 linear feet along the same road from the lot or parcel boundary lines as another family care home, child care center, or applicable group home except for those facilities that: (1) qualify as a single-family dwelling and have an occupancy in the family care home, child care center, or group home of fewer than 6; or (2) where the family care home, child care center, or group home is located within a commercial zone district.

(B) Parking, Screening and Buffering

The facility shall comply with the parking standards of the Land Development Code. All commercial components, such as parking lots and playgrounds, shall be screened and buffered from neighboring residences and uses. For family care homes, child care centers, or group homes, excluding group homes for handicapped or disabled persons, the County may request a transportation plan showing how the operators of the facility intend to meet the transportation needs of the residents of the facility. The sufficiency of the transportation plan may be considered by the County in reviewing an application but may not, by itself, constitute grounds for denying the application. *See*, C.R.S. § 30-28-115(2.5).

(C) Facility Allowances and Applicable Review Processes

(1) A family care home, child care center, or group home shall be considered an allowed use or may require a special use permit depending on the specific facility type and number of

residents/enrollment as shown in Table 5.3 when located within a forestry, agricultural, and residential zone district, and shall not be considered a second principal use when operated in conjunction with or within a residence on the property. Additional necessary persons required for the care and supervision of the permitted number of handicapped or disabled persons are allowed.

(2) A family care home, or group home shall **not** include ~~more than one~~ any person required to register as a sex offender pursuant to C.R.S. § 18–3–412.5, as amended, unless related by blood, marriage or adoption or in foster care.

Comment [MG2]: Modifications added at Planning Commission

(3) A family care home, child care center, or group home shall maintain compliance with any building codes, fire codes, and health codes based upon the occupancy classification and number of residents and necessary persons for care of the residents.

(4) Copies of any applicable current state or local certifications, licenses or permits for the group home shall be maintained on the premises.

(5) All existing family care homes, child care centers, and group homes shall meet these standards, except separation requirements at Section 5.2.2(A), by December 31, 2014 , regardless of pre-existing circumstances, and no nonconforming rights are hereby established.

(D) Standards applicable only to Group Homes

The Colorado General Assembly has declared that state-licensed group homes for no more than 8 developmentally disabled persons or intellectually and developmentally disabled persons is a matter of statewide concern and is a residential use of property for zoning purposes, specifically including single-family residential zoning. C.R.S. § 30-28-115(2)(a). The Colorado General Assembly has declared that state-licensed group homes for no more than 8 persons with mental illness is a matter of statewide concern and is a residential use of property for zoning purposes. C.R.S. § 30-28-115(2)(b.5).

(1) A group home for handicapped or disabled persons shall quarterly (by March 31, June 30, September 30 and December 31 of each year), and otherwise upon request by the County, provide evidence and/or demonstrate to the Development Services Department that the residents in the group home are handicapped individuals and entitled to protection under the FHAA, ADA, or ~~and~~ the Rehabilitation Act.

Comment [MG3]: Modification at Planning Commission

(2) Meetings or gatherings on-site at a group home for handicapped or disabled persons that are consistent with a normal residential family setting shall be allowed and shall only be for residents, family of residents, and necessary persons required for the support, care and supervision of the handicapped or disabled persons. This does not permit conducting ministerial activities of any private or public organization or agency or permit types of treatment activities or the rendering of services in a manner substantially inconsistent with the activities otherwise permitted in the particular zoning district. See, C.R.S. § 30-28-115(2)(c).

Table 5-3 Use Table and Occupancy Limits for Family Care Home, Group Home and Child Care Facilities in Forestry, Agricultural, and Residential Zone Districts

Use Type	Allowed Use (Max. Occupancy/ Enrollment)	Special Use (Occupancy/ Enrollment)
Family Care Home		
Family Foster[2]	8	NA
Day Care Home[2]	12	13 or more
Adult Day Care	8	9-12
Specialized Group Facility[2]	8	9-12
Child Care Center[1]		
Large Day Care Center[2]	NA	13 or more
Small Day Care Center[2]	NA	12 or fewer
Nursery[2]	NA	As Established by State
Day Camp[2]	NA	As Established by State
Center for Developmentally Disabled[2]	8	9 or more
Crisis Center[2]	8	9 or more
Residential Camp[2]	NA	5 or more
Trip Camp[2]	NA	5 or more
Day Treatment Center[2]	8	9 or more
Residential Child Care Facility[2]	8	9 or more
Group Homes[3]		
Persons with Mental Illness[2]	8	9 or more
Developmentally Disabled[2]	8	9 or more
Aged (Assisted Living Residence)[2]	8	9 or more
Group Home for Handicapped or Disabled Persons	~~12~~8	~~13~~9 or more

Notes:
[1] Child care centers are allowed as an accessory use when operated in the same building as a religious institution.
[2] As defined by State law and rules and regulations.
[3] Individual requests for accommodation may be considered by the DSD Director.

The enrollment or occupancy numbers in this table do not include additional necessary persons required for the care and supervision of the enrollees or occupants. Enrollment or occupancy numbers may be affected by licensing or building code requirements.

Comment [MG4]: The El Paso County Planning Commission recommended this number be 8. Staff recommends the number of 12.

Table 5-1. Principal Uses.

Use Type	Agricultural Zoning Districts				Residential Zoning Districts												Industrial Zoning Districts					Subject to Specific Use Standards?	Site Development Plan Required to Initiate Use?					Site Plan Required to Initiate Use?
	F-5	A-35	A-5	RR-5	RR-2.5	RR-0.5	RS-20000	RS-6000	RS-5000	RM-12	RM-30	RT	MHP	MHS	MHPR	RVP	CC	CR	CS	I-2	I-3	C-1	C-2	I-1	R-4			
Acid Manufacturing																					S			S			YES	
~~Adult Care Home~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~											~~YES~~		~~YES~~
Agricultural Business		S																									YES	
Agricultural Stand	A	A	A	A																						YES		YES
Airstrip, Personal		S																									YES	YES
Amusement Center, Indoor																	S	A	A			A	A	A			YES	
Amusement Center, Outdoor	S	S	S[2]														S	S	S			S	S	A			YES	
Animal Day Care Facility																		A	A	A				A		YES	YES	
Animal Refuge	S	S	S	S																							YES	
Auction Facility		S	S														S		A				A	A		YES	YES	
Automobile and Boat Storage Yards																	S		A	A	A			A		YES	YES	
Automobile and Trailer Sales																	S	S	A	S				A			YES	
Bakery, Retail																	A	A	A					A			YES	
Bakery, Wholesale																			A	A	A			A			YES	
Bar																	A	A	A			A	A	A			YES	
Barber/Beauty Shop																	A	A	A			A	A	A			YES	

Notes:

"A" = Allowed Use, "S" =Special Use, "T"= Temporary Use

[1]Minimum lot area of 5 acres irrespective of nonconforming lot or parcel status

[2]Minimum lot area of 10 acres irrespective of nonconforming lot or parcel status

[3]Minimum lot area of 35 acres irrespective of nonconforming lot or parcel status

[4]Use may be an allowed use or special use depending on size and other criteria. See specific use criteria.

[5]A minimum of 1acre is required for a private stable.

Use Type	Agricultural Zoning Districts				Residential Zoning Districts												Industrial Zoning Districts									Subject to Specific Use Standards?	Site Development Plan Required to Initiate Use?		Site Plan Required to Initiate Use?
	F-5	A-35	A-5	RR-5	RR-2.5	RR-0.5	RS-20000	RS-6000	RS-5000	RM-12	RM-30	RT	MHP	MHS	MHPR	RVP	CC	CR	CS	I-2	I-3	C-1	C-2	M	R-4				
Peddler Sales																	T	T	T			T	T	T		YES			YES
Petroleum Refining																					S			S			YES		
Plaster Manufacturing																					S			S			YES		
Prison, Private		S															S		S	S	S			S			YES		
Proprietary School																	A	A	A	S				A			YES		
Public Building, Way or Space	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	YES	YES		
Public Park and Open Space	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	YES			
Publishing Companies																			S	A	A			A			YES		
Race Track		S^2	S^2																		S			A			YES		
Ranch	A^3	A^3	A^3	A^3																									
Recreation Camp	S	S	S	S																							YES		
Recreational Vehicle and Boat Storage																	S		A	A	A			A			YES		
Recycling Facility																					A			A		YES	YES		
Rehabilitation Facility Delete	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	S	S	~~S~~					~~D~~	~~D~~	~~D~~			~~D~~	~~D~~	~~D~~						
Religious Housing		S								A	A																YES		
Religious Institution	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			A	A	A			YES		
Rendering Plant		S	S^2																		S			S			YES		

Notes:

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[1]Minimum lot area of 5 acres irrespective of nonconforming lot or parcel status

[2]Minimum lot area of 10 acres irrespective of nonconforming lot or parcel status

[3]Minimum lot area of 35 acres irrespective of nonconforming lot or parcel status

[4]Use may be an allowed use or special use depending on size and other criteria. See specific use criteria.

[5]A minimum of 1acre is required for a private stable.

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement

SHR:TJM:CDJ:ec
DJ# 175-13-153

U.S. Mail: *950 Pennsylvania Avenue, NW - G St. Washington, DC 20530*
Overnight: *1800 G Street, NW Suite 7002 Washington, DC 20006*
Telephone: *(202) 514-4713*
Facsimile: *(202) 514-1116*

November 12, 2013

Via Federal Express

Diana K. May
Office of the County Attorney
El Paso County, Colorado
200 S. Cascade Avenue
Colorado Springs, CO 80903

Re: Courage to Change Recovery Ranch v. El Paso County HUD Case No: 08-13-0082-8

Dear Counsel:

This is to inform you that the Department of Justice has initiated an investigation of the zoning and land use practices of El Paso County, Colorado pursuant to the Fair Housing Act ("FHA"), 42 U.S.C. §§ 3601–3631. As you know, on January 2, 2013, Judith Miller, Executive Director, on behalf of the Courage to Change Recovery Ranch, filed a complaint with the Department of Housing and Urban Development ("HUD") alleging that El Paso County Board of Commissioners of El Paso, Colorado, discriminated against her and the disabled residents of the sober-care facility that she operates through the application of its zoning and land use laws. HUD referred this matter to the Department of Justice pursuant to 42 U.S.C. § 3610(g)(2)(C). Our investigation is preliminary in nature and we have not made any determination as to whether El Paso County violated the Fair Housing Act ("FHA").

This office enforces the FHA, which prohibits discrimination in housing on the basis of race, color, national origin, religion, sex, familial status, or disability. The FHA authorizes the Attorney General to commence a civil action whenever she has reasonable cause to believe that any person or group of persons has engaged in a pattern or practice of housing discrimination, or that a group of persons has been denied any of the rights granted by the FHA and that such denial raises an issue of general public importance. *See* 42 U.S.C. § 3614(a).

We believe that the public interest and the interest of El Paso County will be best served by our having complete and accurate information about the issues we are investigating. Accordingly, we request that you provide the following information within thirty (30) days of your receipt of this letter:

1. A description of the jurisdiction, functions, and duties of the El Paso County Administrator, the El Paso County Development Services Department, the El Paso County Planning Commission/Division, and the El Paso County Board of Commissioners as they relate to land use, and in particular determinations of whether a particular land use will require a Special Use Permit and whether an application for a Special Use Permit will be granted. This request seeks information regarding whether the above-listed entities act as agents of El Paso County when make determinations regarding land use applications originating in unincorporated El Paso County.

2. A statement of the identities of the person(s) responsible for producing the minutes for the bodies listed in request 2, above.

3. A copy of all correspondence, electronic mail, letters, notes, agendas, minutes of meetings and hearings, notices, resolutions, decisions, video and audio recordings, staff recommendations, computer records, and other documents maintained by the county of El Paso its entities listed in Number 2 above, from January 1, 2010 to December 31, 2013 related to the Courage to Change Addiction Recovery Ranch and/or the property located at 5485 Appaloosa Drive, El Paso County, Colorado. This request includes documents originated by County personnel as well as documents, information, or complaints provided to County employees, agencies, or departments from third parties.

4. Copies of any city or state provision on which the County relied (or relies) for any contention that the Courage for Change Addiction Recovery Ranch required a Special Use permit to operate its sober-home facility at 5485 Appaloosa Drive, El Paso County, Colorado.

5. A copy of the County's current policies regarding requests for reasonable accommodations to the County's zoning and land use laws relating to housing for disabled persons, as well as any prior version of such policies in effect after January 1, 2010.

6. A statement indicating whether the County ever granted Courage for Change Addiction Recovery Ranch a reasonable accommodation to the County's zoning and land use regulations that would permit operation of the sober-home facility located at 5485 Appaloosa Drive, El Paso, Colorado. If the County did not grant a reasonable accommodation, provide a statement of the basis for the denial(s).

7. Copies of any and all requests made by housing providers for persons with disabilities other than Courage for Change Addiction Recovery Ranch since January 1, 2010, for reasonable accommodations, Special Use Permits, or other entitlements under the County's zoning and land use laws. For each request, provide copies of all records relating thereto, including the County's response(s) or decision(s).

8. A copy of all correspondence, electronic mail, letters, notes, agendas, minutes of meetings and hearings, notices, resolutions, decisions, video and audio recordings, staff recommendations, computer records, and other documents maintained by the County and its entities regarding any complaint received by any County employee, agency, or department regarding an alleged violation of the El Paso County Land Development Code ("LDC") based on, or in any way related to, the definitions of "family," "assisted living," or "group home."

9. A statement indicating whether the County currently receives federal housing or community-development grants or subsidies, the amounts and sources of such federal grants or subsidies, and the address(es) of the properties benefitting therefrom.

In responding to the United States' requests, please indicate the number of the request to which each explanation and document relates. All requested documents should be sent via overnight mail to my attention at the U.S. Department of Justice, Civil Rights Division, Housing & Civil Enforcement Section, 1800 G Street NW, Suite 7121, Washington, D.C., 20006.

We have attempted to limit the areas of inquiry to expedite the initial phase of this investigation and are willing to work with you to minimize any burdens that would be imposed on you or your staff in obtaining this information. In addition to providing us with the requested information, we invite you to provide us with any other information that you believe may be relevant to our inquiry. We may want to interview certain County employees, agents, or officials, and will let you know of any need to interview such persons.

Finally, we request that the County maintain in their current form any and all records, documents, files, or tapes that could be relevant to this investigation. To the extent that such records are contained in a computer system, computer files should not be altered or destroyed pending completion of our investigation. If there is a need to discard any information or documentation, we request that you notify me prior to taking such action.

If you have any questions or concerns, or would like to discuss this matter, please contact me at (202) 353-9705 or (202) 514-4713. Thank you for your cooperation.

Sincerely,

Steven H. Rosenbaum
Chief

By: 

Charla Jackson
Trial Attorney
Housing and Civil Enforcement Section

EL PASO COUNTY

OFFICE OF THE COUNTY ATTORNEY
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January 29, 2014

Charla Jackson
Trial Attorney
Housing & Civil Enforcement Section
Civil Rights Division
United States Department of Justice
950 Pennsylvania Ave, Northwest-G Street
Washington DC 20530

Re: Courage to Change Recovery Ranch
The El Paso County HUD Case No. 08–13–0082–8

Dear Ms. Jackson:

As promised in our telephone call of January 28, this letter is written to inform you of El Paso County's intentions with respect to the Courage to Change Recovery Ranch ("CCRR") alcohol and drug rehabilitation group home at 5485 Apaloosa Drive in El Paso County, Colorado. In addition, this letter will describe the amendments which County staff has initiated, at the direction of the Board of County Commissioners, to the County's Land Development Code to provide for such group homes as an allowed use by right in those zone districts in the County permitting single-family residences.

The County has reviewed the applicable law concerning local land use regulation of group homes for handicapped individuals and other protected classes under the Fair Housing Act, the Americans with Disabilities Act and the Rehabilitation Act. We agree that the Courage to Change Recovery Ranch operation as presently configured and as described to the County by the operators of that facility, qualifies under these Acts as operating a group home for disabled persons. Accordingly, this letter advises you that the County intends to take the following actions:

1. The County has not acted to enjoin or otherwise prevent CCRR from operating at the Apaloosa address since it commenced operations on or about April 1, 2011. The County agrees that a special use permit is not required for this operation, so long as it continues to qualify as a group home for disabled or handicapped persons.

200 S. CASCADE AVENUE
OFFICE: (719) 520-6485
COLORADO SPRINGS, CO 80903
FAX: (719) 520-6487

2. The County has initiated the process of amending its Land Development Code ("LDC") to provide that drug and alcohol rehabilitation group homes shall be classified as "Adult Care Homes," and shall be permitted as uses by right in the zone districts in the County in which single-family homes are permitted as uses by right. The LDC will be amended to permit all Adult Care Homes which provide congregate living for disabled or handicapped persons within the scope of the Fair Housing Act, ADA and Rehabilitation Act to be occupied by up to 12 such persons per home, as well as such additional necessary persons required for the care and supervision of the permitted number of handicapped or disabled persons.

3. The LDC will be amended to add a requirement that all state certifications required for the operation of such group homes be provided to the County as well as periodic demonstrations by the operator that the residents of the home are handicapped or disabled persons.

4. The LDC will be further amended to provide that a permitted Adult Care Home shall not include more than one person required to register as a sex offender pursuant to Section 18–3–412.5, C.R.S., as amended, unless related by blood, marriage or adoption.

5. While not required by federal law, the County will also consider permitting Adult Care Homes for handicapped or disabled persons to be located in commercial districts within the County as allowed uses by right, subject to the same additional conditions described above.

In order to amend our LDC under Colorado law, we must first submit the changes to our local planning commission. The commission will not meet again until the beginning of March. In addition, the LDC amendments must be noticed for two public hearings prior to a vote by our El Paso County Board of County Commissioners. We are hopeful we can complete this process by April 8, 2014.

Pursuant to our conversation on January 28, the County is not at this time including with this letter the information requested in your letter to me dated November 12, 2013. This is in recognition of the fact that the County has agreed that the CCRR operation, as presently configured and represented to the County, qualifies for protection under federal law and that the County is acting expeditiously to amend its LDC to comply with the law. I would appreciate your confirming in writing that it is no longer necessary for the County to provide this information at this time. Please know that the County has collected this information and is certainly willing to provide it but, as you and I discussed, that now appears unnecessary and would be a needless expense.

I trust this letter adequately addresses the issues raised by your November 12, 2013 letter. If so, I would appreciate your confirming receipt of this letter.

Sincerely,

Diana K. May
Senior Assistant County Attorney

DKM:cc

THE UNITED STATES DEPARTMENT of JUSTICE

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THE FAIR HOUSING ACT

The Fair Housing Act, 42 U.S.C. 3601 et seq., prohibits discrimination by direct providers of housing, such as landlords and real estate companies as well as other entities, such as municipalities, banks or other lending institutions and homeowners insurance companies whose discriminatory practices make housing unavailable to persons because of:

- race or color
- religion
- sex
- national origin
- familial status, or
- disability.

In cases involving discrimination in mortgage loans or home improvement loans, the Department may file suit under both the Fair Housing Act and the Equal Credit Opportunity Act. Under the Fair Housing Act, the Department of Justice may bring lawsuits where there is reason to believe that a person or entity is engaged in a "pattern or practice" of discrimination or where a denial of rights to a group of persons raises an issue of general public importance. Where force or threat of force is used to deny or interfere with fair housing rights, the Department of Justice may institute criminal proceedings. The Fair Housing Act also provides procedures for handling individual complaints of discrimination. Individuals who believe that they have been victims of an illegal housing practice, may file a complaint with the Department of Housing and Urban Development [HUD] or file their own lawsuit in federal or state court. The Department of Justice brings suits on behalf of individuals based on referrals from HUD.

Discrimination in Housing Based Upon Race or Color

One of the central objectives of the Fair Housing Act, when Congress enacted it in 1968, was to prohibit race discrimination in sales and rentals of housing. Nevertheless, more than 30 years later, race discrimination in housing continues to be a problem. The majority of the Justice Department's pattern or practice cases involve claims of race discrimination. Sometimes, housing providers try to disguise their discrimination by giving false information about availability of housing, either saying that nothing was available or steering homeseekers to certain areas based on race. Individuals who receive such false information or misdirection may have no knowledge that they have been victims of discrimination. The Department of Justice has brought many cases alleging this kind of discrimination based on race or color. In addition, the Department's Fair Housing Testing Program seeks to uncover this kind of hidden discrimination and hold those responsible accountable. Most of the mortgage lending cases brought by the Department under the Fair Housing Act and Equal Credit Opportunity Act have alleged discrimination based on race or color. Some of the Department's cases have also alleged that municipalities and other local government entities violated the Fair Housing Act when they denied permits or zoning changes for housing developments, or relegated them to predominantly minority neighborhoods, because the prospective residents were expected to be predominantly African-Americans.

Discrimination in Housing Based Upon Religion

The Fair Housing Act prohibits discrimination in housing based upon religion. This prohibition covers instances of overt discrimination against members of a particular religion as well less direct actions, such as zoning ordinances designed to limit the use of private homes as a places of worship. The number of cases filed since 1968 alleging religious discrimination is small in comparison to some of the other prohibited bases, such as race or national origin. The Act does contain a limited exception that allows non-commercial housing operated by a religious organization to reserve such housing to persons of the same religion.

GENERAL INFORMATION
CIVIL RIGHTS DIVISION
HOUSING & CIVIL ENFORCEMENT

LEADERSHIP

Steven H. Rosenbaum
Chief

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Washington, D.C. 20530

Email: fairhousing@usdoj.gov

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Discrimination in Housing Based Upon Sex, Including Sexual Harassment

The Fair Housing Act makes it unlawful to discriminate in housing on the basis of sex. In recent years, the Department's focus in this area has been to challenge sexual harassment in housing. Women, particularly those who are poor, and with limited housing options, often have little recourse but to tolerate the humiliation and degradation of sexual harassment or risk having their families and themselves removed from their homes. The Department's enforcement program is aimed at landlords who create an untenable living environment by demanding sexual favors from tenants or by creating a sexually hostile environment for them. In this manner we seek both to obtain relief for tenants who have been treated unfairly by a landlord because of sex and also deter other potential abusers by making it clear that they cannot continue their conduct without facing repercussions. In addition, pricing discrimination in mortgage lending may also adversely affect women, particularly minority women. This type of discrimination is unlawful under both the Fair Housing Act and Equal Credit Opportunity Act.

Discrimination in Housing Based Upon National Origin

The Fair Housing Act prohibits discrimination based upon national origin. Such discrimination can be based either upon the country of an individual's birth or where his or her ancestors originated. Census data indicate that the Hispanic population is the fastest growing segment of our nation's population. The Justice Department has taken enforcement action against municipal governments that have tried to reduce or limit the number of Hispanic families that may live in their communities. We have sued lenders under both the Fair Housing Act and the Equal Credit Opportunity Act when they have imposed more stringent underwriting standards on home loans or made loans on less favorable terms for Hispanic borrowers. The Department has also sued lenders for discrimination against Native Americans. Other areas of the country have experienced an increasing diversity of national origin groups within their populations. This includes new immigrants from Southeastern Asia, such as the Hmong, the former Soviet Union, and other portions of Eastern Europe. We have taken action against private landlords who have discriminated against such individuals.

Discrimination in Housing Based Upon Familial Status

The Fair Housing Act, with some exceptions, prohibits discrimination in housing against families with children under 18. In addition to prohibiting an outright denial of housing to families with children, the Act also prevents housing providers from imposing any special requirements or conditions on tenants with custody of children. For example, landlords may not locate families with children in any single portion of a complex, place an unreasonable restriction on the total number of persons who may reside in a dwelling, or limit their access to recreational services provided to other tenants. In most instances, the amended Fair Housing Act prohibits a housing provider from refusing to rent or sell to families with children. However, some facilities may be designated as Housing for Older Persons (55 years of age). This type of housing, which meets the standards set forth in the Housing for Older Persons Act of 1995, may operate as "senior" housing. The Department of Housing and Urban Development (HUD) has published regulations and additional guidance detailing these statutory requirements.

Discrimination in Housing Based Upon Disability

The Fair Housing Act prohibits discrimination on the basis of disability in all types of housing transactions. The Act defines persons with a disability to mean those individuals with mental or physical impairments that substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The Fair Housing Act also protects persons who have a record of such an impairment, or are regarded as having such an impairment. Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled under the Fair Housing Act, by virtue of that status. The Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others. Determining whether someone poses such a direct threat must be made on an individualized basis, however, and cannot be based on general assumptions or speculation about the nature of a disability. The Division's enforcement of the Fair Housing Act's protections for persons with disabilities has concentrated on two major areas. One is insuring that zoning and other regulations concerning

land use are not employed to hinder the residential choices of these individuals, including unnecessarily restricting communal, or congregate, residential arrangements, such as group homes. The second area is insuring that newly constructed multifamily housing is built in accordance with the Fair Housing Act's accessibility requirements so that it is accessible to and usable by people with disabilities, and, in particular, those who use wheelchairs. There are other federal statutes that prohibit discrimination against individuals with disabilities, including the Americans with Disabilities Act, which is enforced by the Disability Rights Section of the Civil Rights Division.

Discrimination in Housing Based Upon Disability Group Homes

Some individuals with disabilities may live together in congregate living arrangements, often referred to as "group homes." The Fair Housing Act prohibits municipalities and other local government entities from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against individuals with disabilities. The Fair Housing Act makes it unlawful --

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

There has been a significant amount of litigation concerning the ability of local governmental units to exercise control over group living arrangements, particularly for persons with disabilities. To provide guidance on these issues, the Departments of Justice and Housing and Urban Development have issued a Joint Statement on Group Homes, Local Land Use and the Fair Housing Act.

Discrimination in Housing Based Upon Disability -- Accessibility Features for New Construction

The Fair Housing Act defines discrimination in housing against persons with disabilities to include a failure "to design and construct" certain new multi-family dwellings so that they are accessible to and usable by persons with disabilities, and particularly people who use wheelchairs. The Act requires all newly constructed multi-family dwellings of four or more units intended for first occupancy after March 13, 1991, to have certain features: an accessible entrance on an accessible route, accessible common and public use areas, doors sufficiently wide to accommodate wheelchairs, accessible routes into and through each dwelling, light switches, electrical outlets, and thermostats in accessible location, reinforcements in bathroom walls to accommodate grab bar installations, and usable kitchens and bathrooms configured so that a wheelchair can maneuver about the space.

Developers, builders, owners, and architects responsible for the design or construction of new multi-family housing may be held liable under the Fair Housing Act if their buildings fail to meet these design requirements. The Department of Justice has brought many enforcement actions against those who failed to do so. Most of the cases have been resolved by consent decrees providing a variety of types of relief, including: retrofitting to bring inaccessible features into compliance where feasible and where it is not -- alternatives (monetary funds or other construction requirements) that will provide for making other housing units accessible; training on the accessibility requirements for those involved in the construction process; a mandate that all new housing projects comply with the accessibility requirements, and monetary relief for those injured by the violations. In addition, the Department has sought to promote accessibility through building codes.

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

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

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

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

The Fair Housing Act makes it unlawful --

- To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.
- To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.
- To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.

- What constitutes a reasonable accommodation is a case-by-case determination.
- Not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.

The disability discrimination provisions of the Fair Housing Act do not extend to persons who claim to be disabled solely on the basis of having been adjudicated a juvenile delinquent, having a criminal record, or being a sex offender. Furthermore, the Fair Housing Act does not protect persons who currently use illegal drugs, persons who have been convicted of the manufacture or sale of illegal drugs, or persons with or without disabilities who present a direct threat to the persons or property of others.

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

DATE: AUGUST 18, 1999

Questions and Answers

GENERAL INFORMATION
CIVIL RIGHTS DIVISION
HOUSING & CIVIL ENFORCEMENT

LEADERSHIP

Steven H. Rosenbaum
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on the Fair Housing Act and Zoning

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

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

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

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

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

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

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

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

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

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

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

A local government may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions are imposed on all such groups. Thus, in the case where a family is defined to include up to six unrelated people, an ordinance would not, on its face, violate the Act if a group home for seven people with disabilities was not allowed to locate in a single family zoned neighborhood, because a group of seven unrelated people without disabilities would also be disallowed. However, as discussed below, because persons with

disabilities are also entitled to request reasonable accommodations in rules and policies, the group home for seven persons with disabilities would have to be given the opportunity to seek an exception or waiver. If the criteria for reasonable accommodation are met, the permit would have to be given in that instance, but the ordinance would not be invalid in all circumstances.

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

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

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

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

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

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

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

Where a local zoning scheme specifies procedures for seeking a departure from the general rule, courts have decided, and the Department of Justice and HUD agree, that these procedures must ordinarily be followed. If no procedure is specified, persons with disabilities may, nevertheless, request a reasonable accommodation in some other way, and a local government is obligated to grant it if it meets the criteria discussed above. A local government's failure to respond to a request for reasonable accommodation or an inordinate delay in responding could also violate the Act.

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

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

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

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

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

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

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

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

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

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

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

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

For example, neighbors and local government officials may be legitimately concerned that a group home for adults in certain circumstances may create more demand for on-street parking than would a typical family. It is not a violation of the Fair Housing Act for neighbors or officials to raise this concern and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the application, if another type of facility would ordinarily be denied a permit for such parking problems. However, if a group of

individuals with disabilities or a group home operator shows by credible and unrebutted evidence that the home will not create a need for more parking spaces, or submits a plan to provide whatever off-street parking may be needed, then parking concerns would not support a decision to deny the home a permit.

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

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

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

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

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

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

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

If HUD determines that there is no reasonable basis to believe that there may be a violation, it will close an investigation without referring the matter to the Department of Justice. Although the Department of Justice would still have independent "pattern or practice" authority to take enforcement action in the matter that was the subject of the closed HUD investigation, that would be an unlikely event. A HUD or Department of Justice decision not to proceed with a zoning or land use 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 the Department of Justice encourage parties to group home disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation. HUD attempts to conciliate all Fair Housing Act complaints that it receives. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

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1. The Fair Housing Act uses the term "handicap." This document uses the term "disability" which has exactly the same legal meaning.

2. There are groups of unrelated persons with disabilities who choose to live together who do not consider their living arrangements "group homes," and it is inappropriate to consider them "group homes" as that concept is discussed in this statement.

THE UNITED STATES DEPARTMENT of JUSTICE

THE COMMON LAW IS THE WILL OF Mankind ISSUING FROM THE Life OF THE People

SEARCH THE SITE SEARCH

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
May 14, 2004

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

REASONABLE ACCOMMODATIONS UNDER 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 [1] (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability. [2] One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling. [3] HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to reasonable accommodations. [4]

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them [5] and from treating persons with disabilities less favorably than others because of their disability. The Act also makes it unlawful for any person to refuse "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling." [6] The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations. In addition, in certain circumstances, the Act requires that housing providers allow residents to make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling. [7] With certain limited exceptions (*see* response to question 2 below), the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

2. Who must comply with the Fair Housing Act's reasonable accommodation requirements?

GENERAL INFORMATION
CIVIL RIGHTS DIVISION
HOUSING & CIVIL ENFORCEMENT

LEADERSHIP

Steven H. Rosenbaum
Chief

CONTACT

Housing & Civil Enforcement Section
(202) 514-4713
TTY - 202-305-1882
FAX - (202) 514-1116
To Report an Incident of Housing Discrimination:
1-800-896-7743

MAILING ADDRESS

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Housing and Civil Enforcement Section, NWB
Washington, D.C. 20530

Email: fairhousing@usdoj.gov

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accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing provider must make an exception to its "no pets" policy to accommodate this tenant.

7. Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?

Yes. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable - *i.e.*, if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. An interactive process in which the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

Example: As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection. The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster. Because the housing development is a small operation with limited financial resources and the maintenance staff are on site only twice per week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service. Accordingly, the requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant's disability-related needs - for instance, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash and the provider's maintenance staff can then transfer the trash to the dumpster when they are on site. Such an accommodation would not involve a fundamental alteration of the provider's operations and would involve little financial and administrative burden for the provider while accommodating the tenant's disability-related needs.

There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

8. What is a "fundamental alteration"?

A "fundamental alteration" is a modification that alters the essential nature of a provider's operations

Example: A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car

close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

9. What happens if providing a requested accommodation involves some costs on the part of the housing provider?

Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations. The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative burden.

10. What happens if no agreement can be reached through the interactive process?

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law. For more information about the complaint process, see question 19 below.

11. May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?

No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

Example 1: A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes. He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises. It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes. Since allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter. However, since the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, the man must operate his motorized scooter in a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property. If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

Example 2: Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

12. When and how should an individual request an accommodation?

Under the Act, a resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability.

An applicant or resident is not entitled to receive a reasonable accommodation unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable accommodation request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would

understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

Although a reasonable accommodation request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

Example: A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend. The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form. The provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

13. Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?

No. The Act does not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid individuals with disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request, and, in the event of later disputes, provide records to show that the requests received proper consideration.

A provider may not refuse a request, however, because the individual making the request did not follow any formal procedures that the provider has adopted. If a provider adopts formal procedures for processing reasonable accommodation requests, the provider should ensure that the procedures, including any forms used, do not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. See Questions 16 - 18, which discuss the disability-related information that a provider may and may not request for the purposes of evaluating a reasonable accommodation request.

14. Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?

No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made. A provider has notice that a reasonable accommodation request has been made if a person, her family member, or someone acting on her behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability, even if the words "reasonable accommodation" are not used as part of the request.

15. What if a housing provider fails to act promptly on a reasonable accommodation request?

A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of such persons' disabilities. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and

- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.

Example 1: A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. However, the provider may not ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information/documentation of the disability-related need for an accessible unit.

Example 2: A housing provider operates housing that is legally limited to persons with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent that an applicant has a chronic mental disability, the provider may request reliable information/documentation of the mental disability needed to qualify for the housing.

In some instances, a provider may also request certain information about an applicant's or a resident's disability if the applicant or resident requests a reasonable accommodation. See Questions 17 and 18 below.

17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

Example 1: An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.

Example 2: A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.

Example 3: An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (*see* Answer 16, above). However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits[n1]

or a credible statement by the individual). A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or

detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (*e.g.*, a court-issued subpoena requiring disclosure).

19. If a person believes she has been unlawfully denied a reasonable accommodation, what should that person do if she wishes to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: www.hud.gov; or
- By mailing a completed complaint form or letter to:

  Office of Fair Housing and Equal Opportunity
  Department of Housing & Urban Development
  451 Seventh Street, S.W., Room 5204
  Washington, DC 20410-2000

  Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section - G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at /crt/about/hce/hcehome.html.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

1 The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.

2. The Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. *See* Bragdon v. Abbott, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act 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. § 3604(f)(3)(B).

4. Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability and require recipients of federal financial assistance to provide reasonable accommodations to applicants and residents with disabilities. Although Section 504 imposes greater obligations than the Fair Housing Act, (*e.g.*, providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504. *See* U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2002-01 (HA) http://www.hud. gov/offices/fheo/disabilities/PIH02-01.pdf and "Section 504: Frequently Asked Questions," (www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118) .

5. The Fair Housing Act's protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities 42 U.S.C. § 3604(f)(1)(B), 42 U.S.C. § 3604(f)(1)(C), 42 U.S.C. § 3604(f)(2)(B), 42 U.S.C. § (f)(2)(C). *See also* H.R. Rep. 100-711 - 24 (reprinted in 1988 U.S.C.A.N. 2173, 2184-85) ("The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities."). *Accord*: Preamble to Proposed HUD Rules Implementing the Fair Housing Act, 53 Fed. Reg. 45001 (Nov. 7, 1988) (citing House Report).

6. 42 U.S.C. § 3604(f)(3)(B). HUD regulations pertaining to reasonable accommodations may be found at 24 C.F.R. § 100.204.

7. This Statement does not address the principles relating to reasonable modifications. For further information see the HUD regulations at 24 C.F.R. § 100.203. This statement also does not address the additional requirements imposed on recipients of Federal financial assistance pursuant to Section 504, as explained in the Introduction.

8. The Supreme Court has questioned but has not yet ruled on whether "working" is to be considered a major life activity. See Toyota Motor Mfg, Kentucky, Inc. v. Williams, 122 S. Ct. 681, 692, 693 (2002). If it is a major activity, the Court has noted that a claimant would be required to show an inability to work in a "broad range of jobs" rather than a specific job. *See* Sutton v. United Airlines, Inc., 527 U.S. 470, 492 (1999).

9. *See, e.g.*, United States v. Southern Management Corp., 955 F.2d 914, 919 (4th Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance")

10. Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. *See e.g.*, Cleveland v. Policy Management Systems Corp., 526 U.S. 795, 797 (1999) (noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

5/13/04

C.R.S. 30-28-115

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the First Regular Session of the Sixty-Ninth General Assembly of the State of Colorado (2013) ***

TITLE 30. GOVERNMENT - COUNTY
COUNTY PLANNING AND BUILDING CODES
ARTICLE 28.COUNTY PLANNING AND BUILDING CODES
PART 1. COUNTY PLANNING

C.R.S. 30-28-115 (2013)

30-28-115. Public welfare to be promoted - legislative declaration - construction

(1) Such regulations shall be designed and enacted for the purpose of promoting the health, safety, morals, convenience, order, prosperity, or welfare of the present and future inhabitants of the state, including lessening the congestion in the streets or roads or reducing the waste of excessive amounts of roads, promoting energy conservation, securing safety from fire, floodwaters, and other dangers, providing adequate light and air, classifying land uses and distributing land development and utilization, protecting the tax base, securing economy in governmental expenditures, fostering the state's agricultural and other industries, and protecting both urban and nonurban development.

(2) (a) The general assembly hereby finds and declares that it is the policy of the state to assist developmentally disabled persons to live in normal residential surroundings. Further, the general assembly declares that the establishment of state-licensed group homes for the exclusive use of developmentally disabled persons, which are known as community residential homes as defined in section 27-10.5-102 (4), C.R.S., is a matter of statewide concern and that a state-licensed group home for eight developmentally disabled persons is a residential use of property for zoning purposes. The phrase "residential use of property for zoning purposes", as used in this subsection (2), includes all forms of residential zoning and specifically, although not exclusively, single-family residential zoning. "Developmentally disabled" in this section means a person with a developmental disability as defined in section 27-10.5-102, C.R.S.

Editor's note: This version of paragraph (a) is effective until March 1, 2014.

(a) The general assembly hereby finds and declares that it is the policy of the state to assist persons who have an intellectual and developmental disability to live in typical residential surroundings. Further, the general assembly declares that the establishment of state-licensed group homes for the exclusive use of persons with intellectual and developmental disabilities, which are known as community residential homes as defined in section 25.5-10-202, C.R.S., is a matter of statewide concern and that a state-licensed group home for eight persons with intellectual and developmental disabilities is a residential use of property for zoning purposes. The phrase "residential use of property for zoning purposes", as used in this subsection (2), includes all forms of residential zoning and specifically, although not exclusively, single-family residential zoning. As used in this section, "person with a developmental disability" has the same meaning as "person with an intellectual and developmental disability" as set forth in section 25.5-10-202, C.R.S.

Editor's note: This version of paragraph (a) is effective March 1, 2014.

(b) (I) (Deleted by amendment, L. 2001, p. 103, § 1, effective March 21, 2001.)

(II) The general assembly declares that the establishment of group homes for the aged for the exclusive use of not more than eight persons sixty years of age or older per home is a matter of statewide concern. The general assembly further finds and declares that it is the policy of this state to enable and assist persons sixty years of age or older who do not need nursing facilities and who so elect to live in

normal residential surroundings, including single-family residential units. Group homes for the aged shall be distinguished from nursing facilities, as defined in section 25.5-4-103 (14), C.R.S., and institutions providing life care, as defined in section 12-13-101 (5), C.R.S. Every county having adopted or which shall adopt a zoning ordinance shall provide for the location of group homes for the aged. A group home for the aged established under this paragraph (b) shall not be located within seven hundred fifty feet of another such group home, unless otherwise provided for by the county.

(b.5) The general assembly declares that the establishment of state-licensed group homes for the exclusive use of persons with mental illness as that term is defined in section 27-65-102, C.R.S., is a matter of statewide concern and that a state-licensed group home for eight persons with mental illness is a residential use of property for zoning purposes, as defined in section 31-23-301 (4), C.R.S. A group home for persons with mental illness established under this paragraph (b.5) shall not be located within seven hundred fifty feet of another such group home or of another group home as defined in paragraphs (a) and (b) of this subsection (2), unless otherwise provided for by the county. A person shall not be placed in a group home without being screened by either a professional person, as defined in section 27-65-102 (17), C.R.S., or any other such mental health professional designated by the director of a facility, which facility is approved by the executive director of the department of human services pursuant to section 27-90-102, C.R.S. Persons determined to be not guilty by reason of insanity to a violent offense shall not be placed in such group homes, and any person who has been convicted of a felony involving a violent offense shall not be eligible for placement in such group homes. The provisions of this paragraph (b.5) shall be implemented, where appropriate, by the rules of the department of public health and environment concerning residential treatment facilities for persons with mental illness. Nothing in this paragraph (b.5) shall be construed to exempt such group homes from compliance with any state, county, or municipal health, safety, and fire codes.

(c) Nothing in this subsection (2) shall be construed to supersede the authority of municipalities and counties to regulate such homes appropriately through local zoning ordinances or resolutions, except insofar as such regulation would be tantamount to prohibition of such homes from any residential district. This section is specifically not to be construed to permit violation of the provisions of any zoning ordinance or resolution with respect to height, setbacks, area, lot coverage, or external signage or to permit architectural designs substantially inconsistent with the character of the surrounding neighborhood. This section is also not to be construed to permit conducting of the ministerial activities of any private or public organization or agency or to permit types of treatment activities or the rendering of services in a manner substantially inconsistent with the activities otherwise permitted in the particular zoning district. If reasonably related to the requirements of a particular home, a local zoning or other development regulation may, without violating the provisions of this section, also attach specific location requirements to the approval of the group home, including the availability of such services and facilities as convenience stores, commercial services, transportation, and public recreation facilities.

(2.5) In connection with an application for development approval of the siting of a new facility to be used exclusively as a group home for the aged or for at-risk adults under the county's subdivision, zoning, platting, planned unit development, or other similar land development regulations, in addition to any other information required to be submitted, the county may request the applicant to submit a transportation plan showing how the operators of the facility intend to meet the transportation needs of the residents of the facility. The sufficiency of the transportation plan submitted pursuant to this subsection (2.5) may be considered by the county in reviewing the application but may not, by itself, constitute grounds for denying the application.

(3) (a) As used in this subsection (3), unless the context otherwise requires:

(I) "Manufactured home" means a single family dwelling which:

(A) Is partially or entirely manufactured in a factory;

(B) Is not less than twenty-four feet in width and thirty-six feet in length;

(C) Is installed on an engineered permanent foundation;

(D) Has brick, wood, or cosmetically equivalent exterior siding and a pitched roof; and

(E) Is certified pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. 5401 et seq., as amended.

(II) "Equivalent performance engineering basis" means that by using engineering calculations or testing, following commonly accepted engineering practices, all components and subsystems will perform to meet health, safety, and functional requirements to the same extent as required for other single family housing units.

(b) (I) No county shall have or enact zoning regulations, subdivision regulations, or any other regulation affecting development which exclude or have the effect of excluding manufactured homes from the county if such homes meet or exceed, on an equivalent performance engineering basis, standards established by the county building code.

(II) Nothing in this subsection (3) shall prevent a county from enacting any zoning, developmental, use, aesthetic, or historical standard, including, but not limited to, requirements relating to permanent foundations, minimum floor space, unit size or sectional requirements, and improvement location, side yard, and setback standards to the extent that such standards or requirements are applicable to existing or new housing within the specific use district of the county.

(III) Nothing in this subsection (3) shall preclude any county from enacting county building code provisions for unique public safety requirements such as snow load roof, wind shear, and energy conservation factors.

(IV) Nothing in this subsection (3) shall be deemed to supersede any valid covenants running with the land.

HISTORY: Source: L. 39: p. 301, § 14.CSA: C. 45A, § 14.CRS 53: § 106-2-14. C.R.S. 1963: § 106-2-14.L. 66: p. 43, § 7.L. 75: Entire section amended, p. 933, § 56, effective July 14.L. 76: (2)(a.5) added, p. 695, § 1, effective April 29.L. 79: (1) amended, p. 1161, § 5, effective January 1, 1980.L. 84: (3) added, p. 823, § 1, effective January 1, 1985.L. 87: (2)(b.5) added, p. 1216, § 1, effective July 1.L. 90: (2)(b) amended, p. 1476, § 1, effective July 1.L. 91: (2)(b)(II) amended, p. 1858, § 20, effective April 11.L. 94: (2)(b.5) amended, p. 2715, § 297, effective July 1.L. 2001: (2)(a), (2)(b), and (2)(b.5) amended, p. 103, § 1, effective March 21.L. 2006: (2)(b)(II) amended, p. 2021, § 114, effective July 1; (2)(b.5) amended, p. 1407, § 75, effective August 7.L. 2008: (2.5) added, p. 167, § 1, effective August 5.L. 2010: (2)(b.5) amended, (SB 10-175), ch. 188, p. 806, § 81, effective April 29.L. 2013: (2) (a) amended, (HB 13-1314), ch. 323, p. 1812, § 52, effective March 1, 2014.

Cross references: For the care and treatment of persons with developmental disabilities, see article 10.5 of title 27.

ANNOTATION

Law reviews. For article, "Local Government Exactions from Developers after Beaver Meadows", see 16 Colo. Law. 42 (1987). For article, "Group Homes: Mandated by Statute but Locally Regulated", see 21 Colo. Law. 1643 (1992). For article, "Group Home Regulations Under State and Federal Law", see 35 Colo. Law. 37 (Feb. 2006).

Purposes set forth. This section sets forth the many purposes for which zoning regulations may be designed and enacted, including not only the health, safety, morals, convenience, order, prosperity, or welfare of the present and future inhabitants of the state but also, among other purposes, the classification of land uses and distribution of land development and utilization, protection of the tax base, fostering of the state's agricultural and other industries, and the protection of urban and non-urban development. Bd. of County Comm'rs v. Thompson, 177 Colo. 277, 493 P.2d 1358 (1972).

Judicial presumption of adequate consideration. In the absence of evidence to the contrary, the court will presume that the board of county commissioners did give ample consideration to the multiple

purposes of zoning when it adopted the zoning resolution. Bd. of County Comm'rs v. Thompson, 177 Colo. 277, 493 P.2d 1358 (1972).

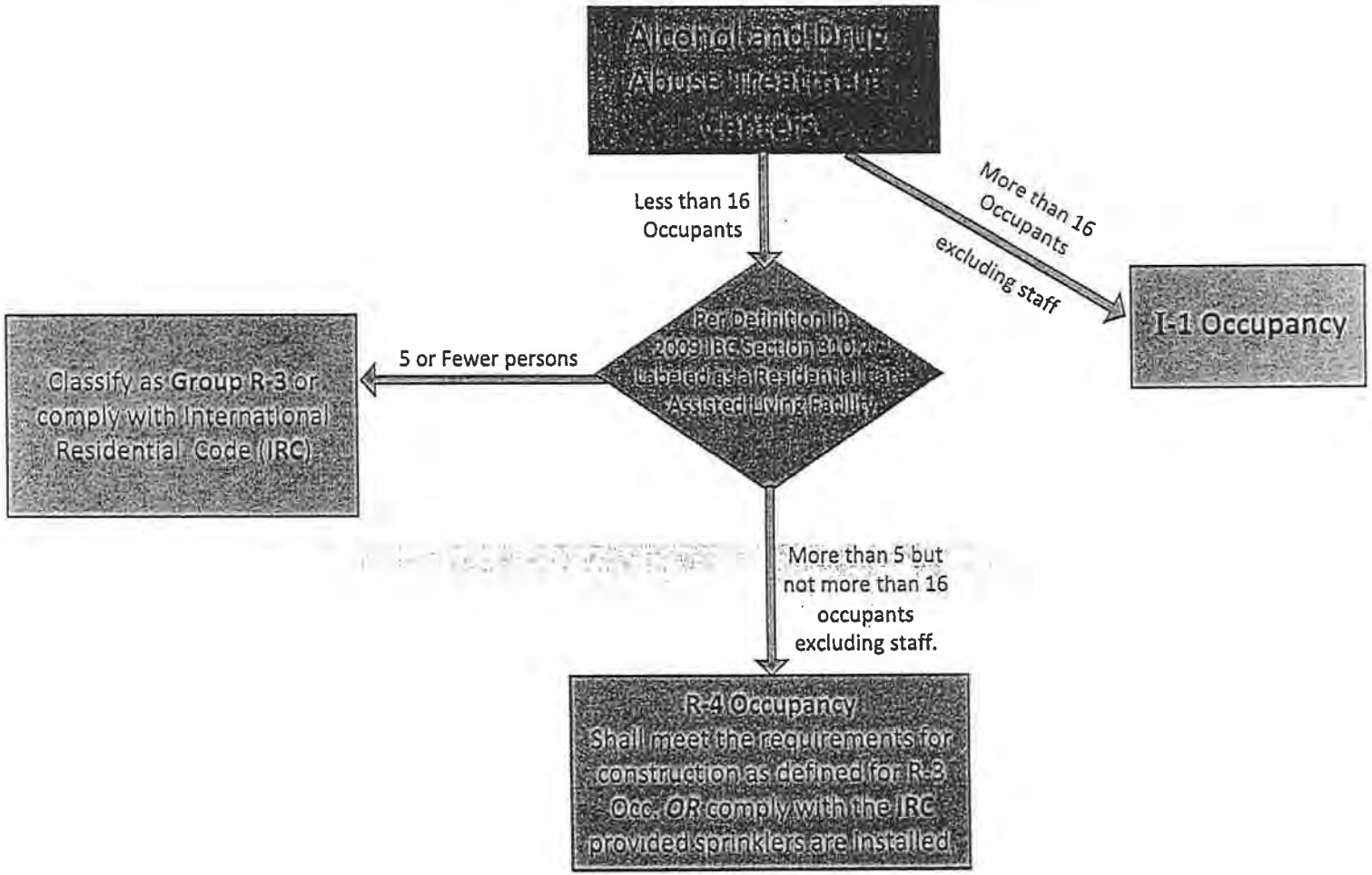
Adoption of section permitting developmentally disabled persons to live in group homes reflects legislative intent to assist such persons to live in normalresidential surroundings. Double D Manor v. Evergreen Meadows, 773 P.2d 1046 (Colo. 1989).

Delegation of zoning authority to county. A delegation of authority is not invalid simply because its terms are broad and general, although there must be sufficient standards and procedural safeguards involved in the delegation and subsequent implementation to ensure than any action taken by a county in response to a land use proposal will be rational and consistent and that judicial review of that action will be available and effective. Beaver Meadows v. Bd. of County Comm'rs, 709 P.2d 928 (Colo. 1985).

Zoning regulations precluding construction of church building in agricultural zone did not arise from an unconstitutional delegation of authority, nor did such regulations deny due process to the church or regulate religious beliefs of the church. Messiah Baptist Church v. County of Jefferson, Colo., 697 F. Supp. 396 (D. Colo. 1987), aff'd, 859 F.2d 820 (10th Cir. 1988), cert. denied, 490 U.S. 1005, 109 S. Ct. 1638, 104 L. Ed. 2d 154 (1989).

Applied in City of Thornton v. Bd. of County Comm'rs, 42 Colo. App. 102, 595 P.2d 264 (1979); Info. Please, Inc. v. Bd. of County Comm'rs, 49 Colo. App. 392, 600 P.2d 86 (1979); Bd. of County Comm'rs v. City of Thornton, 629 P.2d 605 (Colo. 1981); Glennon Heights, Inc. v. Central Bank Trust, 658 P.2d 872 (Colo. 1983); Beaver Meadows v. Bd. of County Comm'rs, 709 P.2d 928 (Colo. 1985).

FLOWCHART FOR OCCUPANCY CLASSIFICATION OF ALCOHOL AND DRUG ABUSE TREATMENT CENTERS



Occupancy Classification / Chapter 3 of the IBC
Brief Explanation

Assembly Group A: uses intended for the gathering together of persons for the purposes such as civic, social or religious functions, recreation, food or drink consumption or awaiting transportation. A room of less than 50 persons used for assembly but is accessory to a different occupancy shall be considered that different occupancy. Assembly area less than 750 s.f. which is accessory to a different occupancy is not considered assembly. Assembly rooms which are accessory to Group E are not considered as Group A. Religious educational rooms and auditoriums with occupant loads less than 100 persons which are accessory to churches are considered A-3. Group A is divided into five sub groups, **A-1** usually with fixed seating, intended for production and viewing of the performing arts or motion pictures, **A-2** uses intended for food and/or drink consumption, **A-3** uses intended for worship, recreation or amusement and other assembly uses not otherwise classified, **A-4** uses intended for viewing of indoor sporting events and activities with spectator seating, **A-5** uses intended for participation in or viewing outdoor activities

Business Group B: Assembly occupancies less than 50 persons and/or uses intended for office, professional or service-type transactions, including storage of records and accounts.

Educational Group E: uses intended by 6 or more persons at any one time for educational purposes through the 12th grade. Daycare uses for educational, supervision or personal care services for more than 5 children older than 2 1/2yrs

Factory Industrial Group F: uses intended for assembling, disassembling, fabricating, finishing, manufacturing, packaging, repair or processing operations that are not classified Group H hazardous or Group S storage. Group is divided into two sub groups, **F-1 Moderate Hazard** and **F-2 Low Hazard**

High-Hazard Group H: uses intended for manufacturing, processing, generation or storage of materials that constitute a physical or health hazard in quantities in excess of those allowed by code. Group H is divided into five sub groups, **H-1** detonation hazard, **H-2** accelerated burning, **H-3** materials that readily support combustion or pose a physical hazard, **H-4** materials are health hazards, **H-5** semiconductor fabrication facilities and comparable R&D areas which HPM's are used.

Institutional Group I: uses intended in which people are cared for or live in a supervised environment, having physical limitations because of health or age are harbored for medical treatment or other care or treatment or in which the liberty of the occupants is restricted. Group I is divided into four sub groups, **I-1** houses more than 16 persons, on a 24 hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides personal care services. The occupants are capable of responding to an emergency situation without physical assistance from staff, **I-2** used for medical, surgical, psychiatric, nursing or custodial care on a 24 hr basis of more than five persons who are not capable of self-preservation. Less than five people shall be considered an R-3, **I-3** is inhabited by more than five persons who are under restraint or security and is occupied by persons who are generally incapable of self-preservation due to security measures not under the occupant's control.

Mercantile Group M: uses intended for the display and sale of merchandise, and involve stocks of goods, wares or merchandise incidental to such purposes and accessible to the public.

Residential Group R: uses intended for sleeping purposes. Group R is divided into four sub groups, **R-1** occupants are transient in nature, **R-2** occupancies containing sleeping units or more than two dwelling units where the occupants are more permanent in nature, **R-3** one and two family dwelling, or adult and child care facilities that provide accommodation for five or fewer persons of any age for less than 24 hrs, **R-4** are intended for occupancy as residential care/assisted living facilities including more than five but not more than sixteen occupants, excluding staff.

Storage Group S: uses intended for storage that is not classified as a hazardous occupancy. Group S is divided into two sub groups, **S-1 Moderate-Hazard storage** and **S-2 Low-Hazard storage**

Utility and Miscellaneous Group U: uses intended for structures of an accessory character and not classified in any specific occupancy.

NOTE: R-3 Occupancy:
Town Houses are occupancies where the development is owned by others but the individual plot of real estate that the dwelling is seated is owned by the occupant.
Condominiums are occupancies where the development is owned by others including the individual plot of real estate but the interior of the dwelling unit from wall to wall is owned by the occupant.

Division 1.5
Division 1.6

Organic peroxides, unclassified detonable
Oxidizers, Class 4
Unstable (reactive) materials, Class 3 detonable and Class 4

[F] 307.4 High-hazard Group H-2. Buildings and structures containing materials that pose a deflagration hazard or a hazard from accelerated burning shall be classified as Group H-2. Such materials shall include, but not be limited to, the following:

Class I, II or IIIA flammable or combustible liquids which are used or stored in normally open containers or systems, or in closed containers or systems pressurized at more than 15 psi (103.4 kPa) gage.
Combustible dusts
Cryogenic fluids, flammable
Flammable gases
Organic peroxides, Class I
Oxidizers, Class 3, that are used or stored in normally open containers or systems, or in closed containers or systems pressurized at more than 15 psi (103 kPa) gage
Pyrophoric liquids, solids and gases, nondetonable
Unstable (reactive) materials, Class 3, nondetonable
Water-reactive materials, Class 3

[F] 307.5 High-hazard Group H-3. Buildings and structures containing materials that readily support combustion or that pose a physical hazard shall be classified as Group H-3. Such materials shall include, but not be limited to, the following:

Class I, II or IIIA flammable or combustible liquids that are used or stored in normally closed containers or systems pressurized at 15 pounds per square inch gauge (103.4 kPa) or less
Combustible fibers, other than densely packed baled cotton
Consumer fireworks, 1.4G (Class C, Common)
Cryogenic fluids, oxidizing
Flammable solids
Organic peroxides, Class II and III
Oxidizers, Class 2
Oxidizers, Class 3, that are used or stored in normally closed containers or systems pressurized at 15 pounds per square inch gauge (103 kPa) or less
Oxidizing gases
Unstable (reactive) materials, Class 2
Water-reactive materials, Class 2

[F] 307.6 High-hazard Group H-4. Buildings and structures which contain materials that are health hazards shall be classified as Group H-4. Such materials shall include, but not be limited to, the following:

Corrosives
Highly toxic materials
Toxic materials

[F] 307.7 High-hazard Group H-5 structures. Semiconductor fabrication facilities and comparable research and development areas in which hazardous production materials (HPM) are used and the aggregate quantity of materials is in excess of those listed in Tables 307.1(1) and 307.1(2) shall be classified as Group H-5. Such facilities and areas shall be designed and constructed in accordance with Section 415.8.

[F] 307.8 Multiple hazards. Buildings and structures containing a material or materials representing hazards that are classified in one or more of Groups H-1, H-2, H-3 and H-4 shall conform to the code requirements for each of the occupancies so classified.

SECTION 308
INSTITUTIONAL GROUP I

308.1 Institutional Group I. Institutional Group I occupancy includes, among others, the use of a building or structure, or a portion thereof, in which people are cared for or live in a supervised environment, having physical limitations because of health or age are harbored for medical treatment or other care or treatment, or in which people are detained for penal or correctional purposes or in which the liberty of the occupants is restricted. Institutional occupancies shall be classified as Group I-1, I-2, I-3 or I-4.

308.2 Group I-1. This occupancy shall include buildings, structures or parts thereof housing more than 16 persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides *personal care services*. The occupants are capable of responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to, the following:

Alcohol and drug centers
Assisted living facilities
Congregate care facilities
Convalescent facilities
Group homes
Halfway houses
Residential board and care facilities
Social rehabilitation facilities

A facility such as the above with five or fewer persons shall be classified as a Group R-3 or shall comply with the *International Residential Code* in accordance with Section 101.2. A facility such as above, housing at least six and not more than 16 persons, shall be classified as Group R-4.

308.3 Group I-2. This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care for persons who are not capable of self-preservation. This group shall include, but not be limited to, the following:

Child care facilities
Detoxification facilities
Hospitals
Mental hospitals
Nursing homes

308.3.1 Definitions. The following words and terms shall, for the purposes of this section and as used elsewhere in this code, have the meanings shown herein.

CHILD CARE FACILITIES. Facilities that provide care on a 24-hour basis to more than five children, 2½ years of age or less.

40

DETOXIFICATION FACILITIES. Facilities that serve patients who are provided treatment for substance abuse on a 24-hour basis and who are incapable of self-preservation or who are harmful to themselves or others.

HOSPITALS AND MENTAL HOSPITALS. Buildings or portions thereof used on a 24-hour basis for the medical, psychiatric, obstetrical or surgical treatment of inpatients who are incapable of self-preservation.

NURSING HOMES. Nursing homes are long-term care facilities on a 24-hour basis, including both intermediate care facilities and skilled nursing facilities, serving more than five persons and any of the persons are incapable of self-preservation.

308.4 Group I-3. This occupancy shall include buildings and structures that are inhabited by more than five persons who are under restraint or security. An I-3 facility is occupied by persons who are generally incapable of self-preservation due to security measures not under the occupants' control. This group shall include, but not be limited to, the following:

Correctional centers
Detention centers
Jails
Prerelease centers
Prisons
Reformatories

Buildings of Group I-3 shall be classified as one of the occupancy conditions indicated in Sections 308.4.1 through 308.4.5 (see Section 408.1).

308.4.1 Condition 1. This occupancy condition shall include buildings in which free movement is allowed from sleeping areas, and other spaces where access or occupancy is permitted, to the exterior via *means of egress* without restraint. A Condition 1 facility is permitted to be constructed as Group R.

308.4.2 Condition 2. This occupancy condition shall include buildings in which free movement is allowed from sleeping areas and any other occupied smoke compartment to one or more other smoke compartments. Egress to the exterior is impeded by locked *exits*.

308.4.3 Condition 3. This occupancy condition shall include buildings in which free movement is allowed within individual smoke compartments, such as within a residential unit comprised of individual *sleeping units* and group activity spaces, where egress is impeded by remote-controlled release of *means of egress* from such a smoke compartment to another smoke compartment.

308.4.4 Condition 4. This occupancy condition shall include buildings in which free movement is restricted from an occupied space. Remote-controlled release is provided to permit movement from *sleeping units*, activity spaces and other occupied areas within the smoke compartment to other smoke compartments.

308.4.5 Condition 5. This occupancy condition shall include buildings in which free movement is restricted from an occupied space. Staff-controlled manual release is provided to permit movement from *sleeping units*, activity spaces and other occupied areas within the smoke compartment to other smoke compartments.

308.5 Group I-4, day care facilities. This group shall include buildings and structures occupied by persons of any age who receive custodial care for less than 24 hours by individuals other than parents or guardians, relatives by blood, marriage or adoption, and in a place other than the home of the person cared for. A facility such as the above with five or fewer persons shall be classified as a Group R-3 or shall comply with the *International Residential Code* in accordance with Section 101.2. Places of worship during religious functions are not included.

308.5.1 Adult care facility. A facility that provides accommodations for less than 24 hours for more than five unrelated adults and provides supervision and *personal care services* shall be classified as Group I-4.

Exception: A facility where occupants are capable of responding to an emergency situation without physical assistance from the staff shall be classified as Group R-3.

308.5.2 Child care facility. A facility that provides supervision and personal care on less than a 24-hour basis for more than five children $2^1/_2$ years of age or less shall be classified as Group I-4.

Exception: A child day care facility that provides care for more than five but no more than 100 children $2^1/_2$ years or less of age, where the rooms in which the children are cared for are located on a *level of exit discharge* serving such rooms and each of these child care rooms has an *exit* door directly to the exterior, shall be classified as Group E.

SECTION 309
MERCANTILE GROUP M

309.1 Mercantile Group M. Mercantile Group M occupancy includes, among others, the use of a building or structure or a portion thereof, for the display and sale of merchandise and involves stocks of goods, wares or merchandise incidental to such purposes and accessible to the public. Mercantile occupancies shall include, but not be limited to, the following:

Department stores
Drug stores
Markets
Motor fuel-dispensing facilities
Retail or wholesale stores
Sales rooms

309.2 Quantity of hazardous materials. The aggregate quantity of nonflammable solid and nonflammable or noncombustible liquid hazardous materials stored or displayed in a single *control area* of a Group M occupancy shall not exceed the quantities in Table 414.2.5(1).

SECTION 310
RESIDENTIAL GROUP R

310.1 Residential Group R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or when not regulated by the *International Residential Code* in accordance with Section 101.2. Residential occupancies shall include the following:

R-1 Residential occupancies containing *sleeping units* where the occupants are primarily transient in nature, including:

Boarding houses (transient)
Hotels (transient)
Motels (transient)

Congregate living facilities (transient) with 10 or fewer occupants are permitted to comply with the construction requirements for Group R-3.

R-2 Residential occupancies containing *sleeping units* or more than two *dwelling units* where the occupants are primarily permanent in nature, including:

Apartment houses
Boarding houses (nontransient)
Convents
Dormitories
Fraternities and sororities
Hotels (nontransient)
Live/work units
Monasteries
Motels (nontransient)
Vacation timeshare properties

Congregate living facilities with 16 or fewer occupants are permitted to comply with the construction requirements for Group R-3.

R-3 Residential occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4 or I, including:

Buildings that do not contain more than two *dwelling units*.
Adult care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours.
Child care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours.
Congregate living facilities with 16 or fewer persons.

Adult care and child care facilities that are within a single-family home are permitted to comply with the *International Residential Code*.

R-4 Residential occupancies shall include buildings arranged for occupancy as residential care/assisted living facilities including more than five but not more than 16 occupants, excluding staff.

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3, except as otherwise provided for in this code or shall comply with the *International Residential Code* provided the building is protected by an *automatic sprinkler system* installed in accordance with Section 903.2.8.

310.2 Definitions. The following words and terms shall, for the purposes of this section and as used elsewhere in this code, have the meanings shown herein.

BOARDING HOUSE. A building arranged or used for lodging for compensation, with or without meals, and not occupied as a single-family unit.

CONGREGATE LIVING FACILITIES. A building or part thereof that contains sleeping units where residents share bathroom and/or kitchen facilities.

DORMITORY. A space in a building where group sleeping accommodations are provided in one room, or in a series of closely associated rooms, for persons not members of the same family group, under joint occupancy and single management, as in college dormitories or fraternity houses.

PERSONAL CARE SERVICE. The care of residents who do not require chronic or convalescent medical or nursing care. Personal care involves responsibility for the safety of the resident while inside the building.

RESIDENTIAL CARE/ASSISTED LIVING FACILITIES. A building or part thereof housing persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides *personal care services*. The occupants are capable of responding to an emergency situation without physical assistance from staff. This classification shall include, but not be limited to, the following: residential board and care facilities, assisted living facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse centers and convalescent facilities.

TRANSIENT. Occupancy of a *dwelling unit* or *sleeping unit* for not more than 30 days.

SECTION 311
STORAGE GROUP S

311.1 Storage Group S. Storage Group S occupancy includes, among others, the use of a building or structure, or a portion thereof, for storage that is not classified as a hazardous occupancy.

311.2 Moderate-hazard storage, Group S-1. Buildings occupied for storage uses that are not classified as Group S-2, including, but not limited to, storage of the following:

Aerosols, Levels 2 and 3
Aircraft hangar (storage and repair)
Bags: cloth, burlap and paper
Bamboos and rattan
Baskets
Belting: canvas and leather
Books and paper in rolls or packs
Boots and shoes
Buttons, including cloth covered, pearl or bone
Cardboard and cardboard boxes
Clothing, woolen wearing apparel
Cordage
Dry boat storage (indoor)
Furniture

PLANNING COMMISSION

MEETING RESULTS *(Unofficial)*

(Audio and audio/video copies of the meeting are available at the Office of the Development Services Department)

Planning Commission (PC) Meeting
Tuesday, May 20, 2014
El Paso County Development Services Department
2880 International Circle, Hearing Room
Colorado Springs, Colorado

PRESENT AND VOTING: TIM TROWBRIDGE, JANE DILLON, JERRY HANNIGAN, TONY GIOIA, AND JIM EGBERT.

PRESENT AND NON-VOTING: SABRINA RAINEY, BRIAN RISLEY, ANDREW WIMBERLY, AND ALLAN CREELY.

ABSENT: BOB CORDOVA, ANNA SPARKS, DAVE KINNISCHTZKE, BOB NULL AND TIM GRAMLING.

STAFF PRESENT: MARK GEBHART, COUNTY ATTORNEY COLE EMMONS, AND GERALD DAHL, ESQ., ASSISTING THE COUNTY.

1. **Report Items**

   A. **Development Services Department – Mark Gebhart**

3. **Consent Items**

   A. **Approval of the Minutes – April 1, 2014 and May 6, 2014**
   The minutes were both approved unanimously (5 – 0).

Regular Item
4. LDC-14-001 **GEBHART**

EL PASO COUNTY LAND DEVELOPMENT CODE AMENDMENT CHAPTER 5.2.2, TABLE 5-1, AND DEFINITIONS AS THEY PERTAIN TO GROUP LIVING FACILITIES FOR HANDICAPPED OR DISABLED PERSONS (LEGISLATIVE)

A request by El Paso County Development Services Department to amend Chapter 5.2.2 and Table 5-1 of the El Paso County Land Development Code (2013) to provide for group living facilities for handicapped or disabled persons, in accordance with the provisions of the Fair Housing Act Amendments of 1988, the Americans with Disabilities Act, and the Rehabilitation Act, as well as related changes to definitions and other conforming amendments.

Mark Gebhart, Deputy Director, LDC Administrator, with the assistance of Cole Emmons, County Attorney, and Gerald Dahl, Attorney, provided an overview of the amendment request, reasoning for the request, and responded to questions presented. Mr. Emmons stated that today's request is a legislative action, and is to be considered fair and thorough today by the Planning Commission members.

IN FAVOR:

Judith Miller: Ms. Miller stated that she operates the Courage to Change Ranch, and has been working on this process for 10 years. She is in favor of the amendment and definitions, as it specifically pertains to the Courage to Change Ranch. She added that the property she is on now is going very well.

IN OPPOSITION:

Leonard Rioth: Mr. Rioth is an attorney, and is present today on behalf of numerous homeowner associations (HOA's). He believes that there are broader concerns today. 1) Public participation in the process; 2) conflict between city and county group home regulations; 3) safety issues, specifically traffic and fire; and 4) interconnection with the Regional Building Code. He believes that group homes are more of a business than a family unit, and should be a Special Use hearing. He noted that there is a difference between city and county regulations. Fire safety is a big concern where evacuation is required.

Tom Guenther: Mr. Guenther noted that he lives on one acre in Red Rocks Ranch. He believes the proposed changes open up the door for more of the types of houses like the Courage to Change Ranch. He has a concern with the amended definition of "Family" in the County Land Development Code, adding that this means "commune" to him. Group homes are not single residences, they are a business. Mr. Guenther referenced the letter from the Department of Justice regarding the paragraph "Discrimination in Housing Based Upon Disability Group Homes." (Page 21 of the Staff Report.) He is opposed to approval of this item.

Johanne Zimmerman: Mr. Zimmerman supports the views of Mr. Rioth and Mr. Guenther, and is in opposition. He believes that the amendment to Chapter 5.2.2, Table 5-1, and the definitions are supporting another type industry. He believes that there needs to be more regulation on facilities like the Courage to Change Ranch, and that facilities like this need to be looked at individually.

NO OPINION:

Roger Lovell: Mr. Lovell is from the Pikes Peak Regional Building Department (RBD), and stated that he had no opinion regarding this item. He stated that the building code does address this type of use. The RBD looks at each type of use, and its risk factor. The risk factor determines whether or not a special construction will be required from the department.

REBUTTAL:

Gerald Dahl, attorney assisting El Paso County, provided a rebuttal, and responded to questions and concerns presented by those in opposition and to Planning Commission members. Mr. Dahl referenced case law and reviewed specific portions of the Federal Housing Administration (FHA), and quoted according to State Statute. Mr. Dahl suggested the following changes to the original proposal, as follows:

Page 7 of the Staff Report, definition of Family. The last sentence of the definition, adding "or in foster care"

Page 8 and 9, 5.2.2, Child Care Centers, Family Care Homes, and Group Homes, (C)(2). The words "more than one" will be replaced with the word "any," and adding the words "or in foster care" at the end of the paragraph.

PC ACTION: **EGBERT MOVED TO APPROVE REGULAR ITEM NO. 4, LDC-14-001 (UTILIZING RESOLUTION NO. 7, MORE PARTICULARLY DESCRIBED ON PAGE 14-022) WITH THE RECOMMENDATIONS AS PRESENTED BY MR. DAHL, WITH TWO CHANGES. TABLE 5-3 (PAGE 10 OF THE STAFF REPORT) HAVE THE ALLOWED (MAXIMUM OCCUPANCY/ENROLLMENT) FOR GROUP HOME FOR HANDICAPPED OR DISABLED PERSONS BE CHANGED FROM 12 TO 5; AND THE SPECIAL USE (OCCUPANCY/ENROLLMENT) BE 6 WITH ANY ZONE LESS THAN 5 ACRES, AND 12 ON 5 ACRES OR MORE. THERE WAS NO SECOND TO THE MOTION. MOTION FAILED.**

PC ACTION: **DILLON MOVED/HANNIGAN SECONDED TO APPROVE REGULAR ITEM NO. 4, LDC-14-001 (UTILIZING RESOLUTION NO. 7, MORE PARTICULARLY DESCRIBED ON PAGE 14-022) WITH THE RECOMMENDATIONS AS PRESENTED BY MR. DAHL AND CHANGES TO TABLE 5-3 (PAGE 10 OF THE STAFF REPORT) AND THAT THE ALLOWED (MAXIMUM OCCUPANCY/ENROLLMENT) FOR GROUP HOME FOR HANDICAPPED OR DISABLED PERSONS BE CHANGED FROM 12 TO 8; AND THE SPECIAL USE (OCCUPANCY/ENROLLMENT) BE CHANGED FROM 13 OR MORE TO 9 OR MORE.**

PC ACTION: **GIOIA MOVED TO AMEND THE PREVIOUS MOTION, REMOVING THE LAST SENTENCE IN THE DEFINITION OF "FAMILY." AND TO REMOVE THE WORDS "CONDUCTING MINISTERIAL ACTIVITIES OF ANY PRIVATE OR PUBLIC ORGANIZATION**

OR AGENCY IN SECTION 5.2.2 (D)(2). THERE WAS NO SECOND TO THE MOTION. MOTION FAILED.

DISCUSSION:

TONY GIOIA STATED THAT HE IS NOT NECESSARILY AGAINST CHANGING THE DEFINITION OF "FAMILY" (PAGE 7 OF THE STAFF REPORT). HOWEVER, HE JUST DOESN'T FEEL THAT THERE IS ENOUGH EVIDENCE THAT THE DECISION SHOULD BE MADE TODAY.

JIM EGBERT STATED THAT IN ORDER TO BE EQUAL, THERE IS A DISTINCTION BETWEEN FAMILY AND UNRELATED PARTIES. HE THINKS THAT WE SHOULD PROVIDE EQUAL PROTECTION TO PEOPLE WITH DISABILITIES AND HANDICAPS IF WE ALLOW A GROUP OF 5, AND THAT THIS COULD CREATE A BURDEN ON FACILITIES SUCH AS THE COURAGE TO CHANGE RANCH . HE NOTED THAT HE HAD LOOKED ON THE MAP FOR THE LOCATION OF THE COURAGE TO CHANGE RANCH, AND BELIEVES IT IS A REASONABLE PLACE FOR THIS FACILITY. HE WOULD LIKE TO SEE THE NUMBER FOR (OCCUPANCY/ENROLLMENT) ON 5 ACRES AND UP TO BE ALLOWED WITHOUT A SPECIAL USE HEARING. HE WILL VOTE AGAINST THE MOTION.

JANE DILLON STATED THAT SHE MADE HER MOTION USING THE NUMBER 8, AS IT DOES BRING THE GROUP HOMES IN LINE WITH THE OTHER TYPES OF GROUP HOMES. THIS NUMBER BRINGS THEM ALL IN LINE.

PC ACTION: UPON VOTING, THE MOTION MADE BY DILLON/SECONDED BY HANNIGAN WAS APPROVED BY A VOTE OF (3 – 2). GIOIA AND EGBERT OPPOSED THE MOTION.

COMMENTS:

TONY GIOIA VOTED NO BECAUSE TACKING ON THE SEX OFFENDER ISSUE ONTO THE CHANGE IS DONE LEGISLATIVELY ONTO A MORE IMPORTANT BILL JUST FOR PERSONAL ISSUES, AND TO GET SOMETHING PASSED. HE ASKED THAT THE BOARD OF COUNTY COMMISSIONERS CONSIDER REMOVING THIS FROM THE DEFINITION OF FAMILY.

JIM EGBERT VOTED NO ON THE MOTION BECAUSE HE DIDN'T WANT TO OVERBURDEN EVERYONE IN THE COUNTY WITH THE NUMBER 5, FEELING THAT THIS IS USING UNEQUAL PROCEDURES TO ACHIEVE EQUALITY. HE BELIEVES THAT THERE IS MERIT IN THE NUMBER 12. IT WOULD PROVIDE A LOT OF PLACES FOR THIS TYPE OF FACILITY. IN LOOKING AT THE NUMBER 8, HE BELIEVES THAT THIS IS FOR STATE LICENSED FACILITIES, NAIVELY THINKING THAT THERE WILL BE MORE SUPERVISION AND OVERSIGHT. IN GROUP HOMES FOR THE DISABLED AND HANDICAPPED THERE WOULD BE NO SUPERVISION, NOR OVERSIGHT WITH THE NUMBER 5.

NOTE: The next Planning Commission Meeting will be June 3, 2014 beginning at 9:00 a.m., with orientation of new members to follow.

Adjourn.

**Minutes approved:*

I. An Overview of the Fair Housing Act, as amended

A. Purpose of the Act: to open up housing opportunities

The Fair Housing Act, originally enacted as Title VIII of the Civil Rights Act of 1968, was enacted "to ensure the removal of artificial, arbitrary and unnecessary barriers [that] operate invidiously to discriminate on the basis of impermissible characteristics." United States v. City of Black Jack, 508 F.2d 1179 (8th Cir. 1974), cert. denied, 422 U.S. 1042 (1975).

This goal was enhanced in the Fair Housing Amendments Act of 1988 (FHAA), which greatly expanded the Federal government's power to enforce the Act and which extended coverage to two new protected classes. In describing the new applicability of the Act to the handicapped, the official House Report concerning the FHAA stated:

> The Committee intends that the prohibition against discrimination against those with handicaps apply to zoning decisions and practices. The Act is intended to prohibit the application of special requirements through land use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community.
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> * * *
>
> While state and local governments have authority to protect safety and health and to regulate use of land,

provided by staff in response to Planning Commission questions

that authority has sometimes been used to restrict the ability of individuals with handicaps to live in communities. This has been accomplished by such means as the enactment of health, safety or land use requirements on congregate living arrangements among non-related persons with disabilities. Since these requirements are not imposed on families and groups of similar size of other unrelated people, these requirements have the effect of discriminating against people with disabilities.

(2) ✓

* * *

Another method of making housing unavailable to people with disabilities has been the application or enforcement of otherwise neutral rules and regulations on health, safety and land-use in a manner which discriminates against people with disabilities. Such discrimination often results from false or overprotective assumptions about the needs of handicapped people, as well as unfounded fears of difficulties about the problems that their tenancies may pose. These and similar practices would be prohibited.

H. Rep. No. 100-711, 100th Cong. 2d Sess., reprinted in, 1988 U.S. Code Congressional and Admin. News 2173, 2184-85.

B. The statute and regulations. 42 U.S.C. § 3601-3631; 24 C.F.R. Parts 100 - 125.

1. Substantive Provisions

42 U.S.C. § 3604 - It shall be unlawful:

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of

services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--

(A) that buyer or renter,

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of--

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes--

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) in connection with the design and construction of covered multifamily dwellings . . . , a failure to design and construct those dwellings in such a manner . . . [to make them] readily accessible to and usable by handicapped persons . . . .

42 U.S.C. § 3605(a) - Discrimination in Residential Real Estate-Related Transactions

It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

Wisconsin 2006

plaintiffs' particular disabilities, Tennessee's hospital-day reduction, even when left unmodified, did not offend the Rehabilitation Act.

[2] Following *Choate*, several courts of appeals have adopted the view that the Rehabilitation Act requires public entities to modify federally assisted programs if such a modification is necessary to ensure that the disabled have equal access to the benefits of that program. *See, e.g., Henrietta D. v. Bloomberg*, 331 F.3d 261, 274–75 (2d Cir.2003). These circuits, including ours, also follow the corollary principle implicit in the *Choate* decision that the Rehabilitation Act helps disabled individuals obtain access to benefits only when they would have difficulty obtaining those benefits "by reason of" their disabilities, and not because of some quality that they share generally with the public. *See, e.g., id.* at 276–79 (acknowledging "that the ADA and the Rehabilitation Act are addressed to rules that hurt people with disabilities by reason of their handicap, rather than that hurt them solely by virtue of what they have in common with other people" (internal quotation marks, citations, alterations and emphasis omitted)); *Washington v. Indiana High Sch. Athletic Assoc.*, 181 F.3d 840, 848 (7th Cir.1999) (noting that, in a Rehabilitation Act modification claim, "[t]here must be a causal connection between the disability and [the plaintiff's] ineligibility"); *Forest City Daly Housing v. Town of N. Hempstead*, 175 F.3d 144, 152 (2d Cir.1999) (holding that, for claims under the FHAA, the ADA and the Rehabilitation Act, a proposed accommodation must be "necessary in light of the disabilities" of the plaintiffs; and dismissing claims because "no analogous housing opportunity exist[ed] for persons without disabilities" (internal quotation marks omitted)); *Crowder v. Kitagawa*, 81 F.3d 1480, 1485 (9th Cir.1996) (relying on *Choate* to require Hawaii to modify a law that required carnivorous animals entering the state, including guide dogs, to be quarantined for 120 days because the quarantine discriminated against the visually impaired "by reason of their disability"); *United States v. Bd. of Trs. of the Univ. of Alabama*, 908 F.2d 740, 748 (11th Cir.1990) (recognizing that *Choate* requires an unmodified program to bear more heavily on the disabled on account of their disability and distinguishing the case of a deaf student who, unlike his non-handicapped peers, is less likely to benefit from his classes without a sign-language interpreter).

2. The Fair Housing Amendments Act

The duty to accommodate imposed by the FHAA, 42 U.S.C. § 3601 et seq., mirrors in large part the modification obligations under the Rehabilitation Act. Enacted in 1988, the FHAA extended the scope of other federal housing laws to cover persons with disabilities. Under these amendments, disabled individuals may not be prevented from buying or renting private housing because of their disabilities. *See id.* § 3604. They also must be provided reasonable "accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford [them] equal opportunity to use and enjoy a dwelling." *Id.* § 3604(f)(3)(B).[4]

4. The legislative history of the Fair Housing Amendments Act explains:

> The Committee intends that the prohibition against discrimination against those with handicaps apply to zoning decisions and practices. The Act is intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community.

H.R.Rep. No. 100–711, at 24 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173, 2185.

[3–5] Although the plain language of the FHAA provides little guidance concerning the reach of its accommodation requirement, the contours of the obligation have been given substantial elaboration by this court and other courts of appeals. The basic elements of an FHAA accommodation claim are well-settled. First, the requested accommodation must be reasonable, which, as we have stated, is a "highly fact-specific inquiry and requires balancing the needs of the parties. An accommodation is reasonable if it is both efficacious and proportional to the costs to implement it." *Oconomowoc Residential Programs*, 300 F.3d at 784 (internal citations omitted). In the zoning context, a municipality may show that a modification to its policy is "unreasonable if it is so at odds with the purpose behind the rule that it would be a fundamental and unreasonable change." *Id.* (internal quotation marks and citations omitted).

Second, the requested accommodation must be "necessary," meaning that, without the accommodation, the plaintiff will be denied an equal opportunity to obtain the housing of her choice. *See id.* at 784; *see also Groeteler v. M & B Assocs.*, 343 F.3d 1143, 1155 (9th Cir.2003); *Smith & Lee Assocs., Inc. v. City of Taylor*, 102 F.3d 781, 795 (6th Cir.1996). This has been described by courts essentially as a causation inquiry. *See, e.g., Lapid–Laurel, L.L.C. v. Zoning Bd. of Adjustment of Twp. of Scotch Plains*, 284 F.3d 442, 460 (3d Cir.2002) ("This requirement has attributes of a causation requirement. And if the proposed accommodation provides no direct amelioration of a disability's effect, it cannot be said to be necessary." (internal quotation marks and citations omitted)).

[6] In addition, the FHAA links the term "necessary" to the goal of "equal opportunity." 42 U.S.C. § 3604(f)(3)(B). The "equal opportunity" element limits the accommodation duty so that not every rule that creates a general inconvenience or expense to the disabled needs to be modified. Instead, the statute requires only accommodations necessary to ameliorate the effect of the plaintiff's disability so that she may compete equally with the nondisabled in the housing market. We have enforced this limitation by asking whether the rule in question, if left unmodified, hurts "handicapped people *by reason of their handicap*, rather than ... by virtue of what they have in common with other people, such as a limited amount of money to spend on housing." *See Hemisphere Bldg. Co., Inc. v. Vill. of Richton Park*, 171 F.3d 437, 440 (7th Cir.1999) (emphasis in original).

Most recently, we considered the "equal opportunity" limitation in deciding an FHAA claim brought by a group home challenging a city's ad hoc decision to shut off the water supply to the group home's land. *See Good Shepherd Manor Found., Inc. v. City of Momence*, 323 F.3d 557, 561–64 (7th Cir.2003). Rejecting the group home's claim that the city had to modify its decision because shutting off its water harmed its disabled residents by preventing them from living in group homes, we stated that "[c]utting off the water prevents anyone from living in a dwelling, not just handicapped people." *Id.* at 562. Put differently, the plaintiff's accommodation claim failed because the disability suffered by the group home's residents did not deny them an equal opportunity to obtain housing.[5]

5. Other circuits similarly have adopted the view that the FHAA's accommodation requirement is limited only to lowering barriers to housing that are created by the disability itself. *See, e.g., Forest City Daly Housing v. Town of N. Hempstead*, 175 F.3d 144, 151–53 (2d Cir.1999) (upholding the decision of a zoning board to prevent a developer of an assisted living facility to relocate to a business zone and agreeing with the district court that "reasonable accommodations were not neces-

3. Title II of the Americans with Disabilities Act

The ADA was built on the Rehabilitation Act and the FHAA, but extends the reach of those laws substantially. Invoking "the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce," the ADA was designed "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1), (b)(4). It forbids discrimination against persons with disabilities in three major areas of public life: (1) employment, which is covered by Title I of the statute, *id.* § 12111–12117; (2) public services, programs and activities, which are the subjects of Title II, *id.* § 12131–12165; and (3) public and private lodging, which is covered by Title III, *id.* § 12181–12189. *See generally, Tennessee v. Lane*, 541 U.S. 509, 516–17, 124 S.Ct. 1978, 158 L.Ed.2d 820 (2004).

This case concerns Title II, commonly referred to as the public services portion of the ADA. Title II provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity." 42 U.S.C. § 12132.

[7] As courts have held, municipal zoning qualifies as a public "program" or "service," as those terms are employed in the ADA, and the enforcement of those rules is an "activity" of a local government.[6] Section 12131(2) goes on to define "qualified individual with a disability" as

> an individual with a disability who, with or without *reasonable modifications* to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

(emphasis added).[7]

Unlike Title I and Title III, Title II of the ADA does not contain a specific accommodation requirement.[8] Instead, the

sary to afford prospective residents an equal housing opportunity, because persons without disabilities do not have opportunities analogous to those being sought here"); *Bryant Woods Inn, Inc. v. Howard County*, 124 F.3d 597, 604 (4th Cir.1997) ("The 'necessary' element—the FHA provision mandating reasonable accommodations which are *necessary* to afford an equal opportunity—requires the demonstration of a direct linkage between the proposed accommodation and the 'equal opportunity' to be provided to the handicapped person. This requirement has attributes of a causation requirement. And if the proposed accommodation provides no direct amelioration of a disability's effect, it cannot be said to be 'necessary.'" (emphasis in original)); *Smith & Lee Assocs., Inc. v. City of Taylor*, 102 F.3d 781, 795 (6th Cir.1996) (concluding that, to satisfy the "necessary" element of a FHAA accommodation claim, the "[p]laintiffs must show that, but for the accommodation, they likely will be denied an equal opportunity to enjoy the housing of their choice").

6. *See, e.g., Bay Area Addiction Research v. City of Antioch*, 179 F.3d 725, 730–32 (9th Cir. 1999) (applying Title II to a city's zoning requirements); *Innovative Health Sys., Inc. v. City of White Plains*, 117 F.3d 37, 48–49 (2d Cir.1997) (same).

7. In the opening provisions of the ADA, Congress made the following finding, applicable to the statute in all parts:

> individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, [and] *failure to make modifications to existing facilities and practices* . . . .

42 U.S.C. § 12101(a)(5) (emphasis added).

8. Title I provides that an employer unlawfully discriminates by "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified indi-

Public Law 100-430
100th Congress

An Act

To amend title VIII of the Act commonly called the Civil Rights Act of 1968, to revise the procedures for the enforcement of fair housing, and for other purposes.

Sept. 13, 1988
[H.R. 1158]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Fair Housing Amendments Act of 1988.
Discrimination, prohibition.
42 USC 3601 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fair Housing Amendments Act of 1988".

Civil Rights Act of 1968.
42 USC 3601 note.

SEC. 2. SHORT TITLE FOR 1968 ACT.

The Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting after the comma at the end of the enacting clause, the following: "That this Act may be cited as the 'Civil Rights Act of 1968'.".

SEC. 3. REFERENCES TO 1968 ACT.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or provision, the reference shall be considered to be made to a section or other provision of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968).

SEC. 4. SHORT TITLE FOR TITLE VIII.

Title VIII is amended by inserting after the title's heading the following new section:

"SHORT TITLE

Fair Housing Act.
42 USC 3601 note.

"SEC. 800. This title may be cited as the 'Fair Housing Act'.".

SEC. 5. AMENDMENTS TO DEFINITIONS SECTION.

42 USC 3602.

(a) MODIFICATION OF DEFINITION OF DISCRIMINATORY HOUSING PRACTICE.—Section 802(f) is amended by striking out "or 806" and inserting in lieu thereof "806, or 818".

(b) ADDITIONAL DEFINITIONS.—Section 802 is amended by adding at the end the following:

"(h) 'Handicap' means, with respect to a person—

"(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

"(2) a record of having such an impairment, or

"(3) being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

"(i) 'Aggrieved person' includes any person who—

"(1) claims to have been injured by a discriminatory housing practice; or

"(2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

"(j) 'Complainant' means the person (including the Secretary) who files a complaint under section 810.

"(k) 'Familial status' means one or more individuals (who have not attained the age of 18 years) being domiciled with—

"(1) a parent or another person having legal custody of such individual or individuals; or

"(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

"(l) 'Conciliation' means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Secretary.

"(m) 'Conciliation agreement' means a written agreement setting forth the resolution of the issues in conciliation.

"(n) 'Respondent' means—

"(1) the person or other entity accused in a complaint of an unfair housing practice; and

"(2) any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 810(a).

"(o) 'Prevailing party' has the same meaning as such term has in section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).".

Handicapped persons.
42 USC 3604.

SEC. 6. DISCRIMINATORY HOUSING PRACTICE AMENDMENTS.

(a) ADDITIONAL DISCRIMINATORY HOUSING PRACTICES.—Section 804 is amended by adding at the end the following:

"(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—

"(A) that buyer or renter,

"(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

"(C) any person associated with that buyer or renter.

"(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—

"(A) that person; or

"(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

"(C) any person associated with that person.

"(3) For purposes of this subsection, discrimination includes—

"(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises;

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May 1, 2014

Mr. Marc Smith
Senior Corporate Attorney
Office of the City Attorney
City of Colorado Springs
30 S. Nevada Ave.
Colorado Springs, CO 80903

Re: Pine Creek Village Association – Shadow Mountain Recovery Application for Reasonable Accommodation

Dear Mr. Smith:

As you know, this law firm represents the Pine Creek Village Community Association (the "Association"). You have provided me with copies of the various documents which the City has received regarding the application of Shadow Mountain Recovery ("SMR") for a "reasonable accommodation" under the Federal Fair Housing Act ("FFHA"). The documents included a letter dated March 14, 2014, ("March 14 Letter") in which Mr. Trevor Broderick, as a Board Member, filed a request on behalf of SMR requesting "a waiver of the limitation of the maximum number of unrelated persons who can reside together as a 'family' under the definition contained in the City of Colorado Springs Zoning Code." The March 14 Letter requests that waiver as an alleged "reasonable accommodation" so that more than five unrelated individuals may reside at 2496 Willow Glen Drive, contrary to the City's ordinances.

Your voice message indicated that SMR's request had been placed "on hold" awaiting further information, but we think that the City should proceed with the process rather than being stalled by any missing additional information. Therefore, this letter requests that the application proceed through the City Code process.

It is clear that the March 14 Letter seeks a waiver of the City's zoning laws as to SMR's operations on property within Pine Creek Village. Therefore, such waiver must be considered by the City either as a Conditional Use under Section 7.5.701 of the City Code or what appears more appropriate as a Use Variance under Section 7.5.803. However, under either provision of the Code, a public hearing will be necessary before the Colorado Springs Planning Commission. The hearing

process is required not only under the City Code but also as a matter of statutory and constitutional right, both for SMR and for all of the citizens of Colorado Springs. Therefore, a primary purpose of this letter is to confirm that the City intends to proceed with the public hearing process pursuant to the City Code. Failure to hold a public hearing would invalidate any action taken by the City regarding the waiver request, as well as denying the statutory and constitutional rights of the applicant and citizens. Denargo Market Neighbors Coalition v. Visser Real Estate Investments, 956 P.2d 630 (Colo. App. 1997, cert. denied 1998); Russell v. City of Central, 892 P2d 432 (Colo. App. 1995).

The March 14 Letter contains many legal arguments and citations; I do not intend to respond to those in great detail. However, my research did find a number of legal treatises which contain very informative discussions of FFHA and zoning; those include Chapters 25 and 39 of 4 Rathkopf's Law of Zoning and Planning, Chapter 25 of McQuillin's The Law of Municipal Corporations, and Chapter 11D of Housing Discrimination Law and Litigation. The cases cited in this letter are drawn largely from those sources.

Based upon those treatises and cases, the City must proceed with SMR's request for an alleged "reasonable accommodation" in accordance with the City's current zoning Code procedures and without any discrimination or delay as to the application. Under the FFHA, the application for a group home, which would not comply with the City's zoning Code, must proceed in accordance with the City's variance or conditional use process. That is the holding of United States v. Village of Palatine, 37 F.3d 1230 (7th Cir. 1994). In that case, a rehabilitation facility for eleven recovering substance abusers refused to file for a special use permit to operate a group home in an area zoned for single family dwellings. Under the Village's ordinances, certain special uses might be permitted under the zoning code's variance process. The Federal Circuit Court held that it was necessary for the applicant to apply to the Village for the special use approval in accordance with the zoning regulations before seeking any judicial action because the FFHA required that the applicant show that it had requested a reasonable accommodation and had been denied. The Court found that Village's special use process was not discriminatory because it applied to all types of uses and variances; that process did not make special requirements in connection with an application by a handicapped user. The Seventh Circuit recognized the importance of public participation through the hearing process when it ruled:

> [D]etermining whether a requested accommodation is reasonable requires, among other things, balancing the needs of the parties involved. In this case the burden on the inhabitants of [the home] imposed by the public hearing—which they need not attend—does not outweigh the Village's interest in applying its facially neutral law to all applicants for a special use approval. Public input is an important aspect of municipal decision making; we cannot impose a blanket requirement that cities waive their public notice and hearing requirements in all cases involving the handicapped.
> 37 F.3d at 1234.

The ruling in that case is similar to the ruling by the Colorado Supreme Court in Zavala v. City and County of Denver, 759 P.2d 664 (Colo. 1988). In that case, plaintiffs challenged a Denver zoning ordinance prohibiting unmarried, unrelated occupants from residing in a single family zone; those plaintiffs were required to proceed under the city's zoning process.

Various cases have followed the reasoning and holding of United States v. Village of Palatine that applications for group homes must proceed through general, non-discriminatory variance procedures for notice and public hearing. Some of those cases are as follows: Oxford House, Inc. v. City of Albany 819 F. Supp. 1168 (ND NY 1993) (group home for alcohol and drug abusers required to seek variance prior to injunction); Oxford House, Inc. v. City of St. Louis, 77 F.3d 249, 253 (8th Cir. 1996) (group homes' refusal to apply for zoning variances which would allow them to operate in single-family neighborhoods is fatal to their reasonable accommodation claims); Marbrunak, Inc. v. City of Stow, Ohio, 974 F.2d 43, 46 (6th Cir. 1992) (group home should have exhausted its administrative remedies before filing suit because "a routine administrative appeal" held out "the promise of speedy relief,"); Oxford House v. City of University City, 87 F.3d 1022, 1024 (8th Cir. 1996) (group home's reasonable accommodation lawsuit failed because plaintiff had not first exhausted "available, nonfutile procedures under the City's zoning ordinances"); Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment of Tp. of Scotch Plains, 284 F.3d 442, 452 n.5 (3d Cir. 2002) (in accord on this issue with the Seventh Circuit in Village of Palatine and the Eighth Circuit in University City); Caron Foundation of Florida, Inc. v. City of Delray Beach, 879 F. Supp. 2d 1353, 1364–66 (S.D. Fla. 2012), appeal dismissed, (11th Circ. 12-13000) (Aug. 16, 2012) (group home's reasonable accommodation claim was unripe due to home's failure to respond to City's inquiries concerning whether home's size was necessary for therapeutic purposes); Marriott Senior Living Services, Inc. v. Springfield Tp., 78 F. Supp. 2d 376, 384-88 (E.D. Pa. 1999) (group home's reasonable accommodation claim is not ripe where defendant has not yet issued a final decision thereon); Oxford House, Inc. v. City of Virginia Beach, Va., 825 F. Supp. 1251, 1259-64 (E.D. Va. 1993) (public nature of permit application process did not per se violate FFHA and so group home's claims dismissed on ripeness grounds based on its failure to apply for a conditional use permit).

The March 14 Letter has considerable discussion of SMR's claim that it is entitled under FFHA cases to a "reasonable accommodation". Based upon the treatises and cases, the FFHA requires that the applicant (SMR) prove that the accommodation is (1) reasonable and (2) may be necessary (3) to provide its handicapped clients an equal opportunity to use and enjoy a dwelling. Therefore, it will be necessary for SMR as the applicant to prove each and every one of those requirements which are discussed below:

1. Reasonable. The first requirement that SMR must prove is that the accommodation requested is "reasonable". The Supreme Court in Southeastern Community College v. Davis, 442 US 397 (1979) ruled in connection with a related statute that an accommodation would not be reasonable if it required "a fundamental alteration" in the defendant's operations or imposed "undue financial and administrative burdens" on the defendant. Applying those general tests is a "highly fact-specific" endeavor requiring a "case-by-case" determination. PGA Tour, Inc. v. Martin, 532 U.S. 661, 688 (2001). After reviewing the facts, courts in the following cases have ruled that the applicant had not shown that the requested accommodation was reasonable:

Good Shepherd Manor Foundation, Inc. v. City of Momence, 323 F.3d 557 (7th Cir. 2003) (affirming jury verdict against group home and trial court's ruling against its reasonable accommodation claim); Hemisphere Bldg. Co., Inc. v. Village of Richton Park, 171 F.3d 437 (7th Cir. 1999) (rejecting group home's reasonable accommodation claim based on Village's denial of its request for a denser zoning classification); Wisconsin Community Services, Inc. v.

City of Milwaukee, 465 F.3d 737 (7th Cir. 2006) (en banc) (reversing reasonable accommodation win by facility for disabled persons under the ADA and § 504 of the Rehabilitation Act, remanding this claim and plaintiff's claims based on intentional discrimination and disparate impact, and noting that the standards for deciding these claims are similar to those under the Fair Housing Act); Oxford House v. City of University City, 87 F.3d 1022, (8th Cir. 1996) (reversing plaintiff's attorney's fees award in group home litigation); Oxford House v. City of St. Louis, 77 F.3d 249 (8th Cir. 1996) (rejecting challenge to "single-family" zoning ordinance that allows households comprised of traditional families, three or fewer unrelated individuals, and group homes of eight or fewer persons); Gamble v. City of Escondido, 104 F.3d 300 (9th Cir. 1997) (rejecting group home's challenge to single-family zoning restriction); Cinnamon Hills Youth Crisis Center, Inc. v. Saint George City, 685 F.3d 917 (10th Cir. 2012) (rejecting group home's reasonable accommodation claims challenging defendant's zoning-based restrictions); Keys Youth Services, Inc. v. City of Olathe, KS, 248 F.3d 1267 (10th Cir. 2001) (rejecting claims of familial status and handicap discrimination by group home for troubled adolescents that was refused a special use permit to locate in single-family area).

2. Necessary. The requested accommodation must be medically necessary for the treatment of the handicap. The applicant must also show nexus between the handicap and the requested accommodation in housing. Many cases have ruled against applicants who have failed to prove such necessity. Those include the following:

Bronk v. Ineichen, 54 F.3d 425, (7th Cir. 1995) (plaintiff failed to prove that requested accommodation was necessary to treat handicap); Dadian v. Village of Wilmette, 269 F.3d 831, 838, (7th Cir. 2001) (jury issue whether accommodation was unreasonable due to safety); Schwarz v. City of Treasure Island, 544 F.3d 1201, 1226 (11th Cir. 2008) (§ 3604(f)(3)(B) "plainly requires the plaintiffs to show that the accommodation they requested actually alleviates the effects of a handicap"); Advocacy and Resource Center v. Town of Chazy, 62 F. Supp. 2d 686, 689–90 (N.D. N.Y. 1999) (denying summary judgment in group home's § 3604(f)(3)(B) challenge to town's adverse zoning action on the ground that "plaintiffs have failed to establish that a reasonable accommodation is required"); U.S. v. Hillhaven Corp., 960 F. Supp. 259, 264 (D. Utah 1997) (defendant wins reasonable accommodation claim in part on the ground that its limited restrictions on tenant's use of a motorized cart did not prevent her from having meaningful access to all areas of the development nor prevent her from participating in all of the activities of her choice); 2001); Cinnamon Hills Youth Crisis Center, Inc. v. Saint George City, 685 F.3d 917, 922–24 (10th Cir. 2012); Magee v. Boston Land Co. Management Services, Inc., 90 Fed. Appx. 560, 561 (2d Cir. 2004); Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment of Tp. of Scotch Plains, 284 F.3d 442, 459-61 (3d Cir. 2002); Howard v. City of Beavercreek, 276 F.3d 802, 805-07, (6th Cir. 2002); Bryant Woods Inn, Inc. v. Howard County, Md., 124 F.3d 597, 603–05 (4th Cir. 1997); U.S. v. California Mobile Home Park Management Co., 107 F.3d 1374, 1380–82, (9th Cir. 1997); Gamble v. City of Escondido, 104 F.3d 300, 307, 19 A.D.D. 740 (9th Cir. 1997); McKivitz v. Township of Stowe, 769 F. Supp. 2d 803, 823–29 (W.D. Pa. 2010); Matarese v. Archstone Pentagon City, 761 F. Supp. 2d 346, 364–65 (E.D. Va. 2011), aff'd in part, vacated in part on other grounds, 468 Fed. Appx. 283 (4th Cir. 2012); Cowart v. City of Eau Claire, 571 F. Supp. 2d 1005, 1013 (W.D. Wis. 2008); Harding v. City of Toledo, 433 F. Supp. 2d 867, 872-73 (N.D. Ohio 2006); Means v. City of Dayton, 111 F. Supp. 2d 969, 978-79 (S.D.

Ohio 2000); Schanz v. Village Apartments, 998 F. Supp. 784, 791–92 (E.D. Mich. 1998); Gavin v. Spring Ridge Conservancy, Inc., 934 F. Supp. 685, 687–88, (D. Md. 1995), aff'd, 92 F.3d 1178 (4th Cir. 1996); Robinson v. City of Friendswood, 890 F. Supp. 616, 622–23, (S.D. Tex. 1995).

Simply showing that the applicant would incur a financial detriment by denial of the request or a financial benefit by its approval is insufficient (and likely irrelevant) to the determination whether the accommodation is necessary. Various cases have so ruled including Hemisphere Bldg. Co., Inc. v. Village of Richton Park, 171 F.3d 437 (7th Cir. 1999) (financial benefit of developer insufficient to supersede zoning); Sanghvi v. City of Claremont, 328 F.3d 532, 538 (9th Cir. 2003) (rejecting group home's § 3604(f)(3)(B) challenge to city's denial of water hook-up on the ground that this would provide merely an economic advantage, not one related to the disability of the home's residents); Keys Youth Services, Inc. v. City of Olathe, KS, 248 F.3d 1267, 1275-76 (10th Cir. 2001) (rejecting group home's § 3604(f)(3)(B) challenge to city's denial of a special use permit even if the permit may have been necessary for the home to generate sufficient funds to survive; Smith & Lee Associates, Inc. v. City of Taylor, Mich., 102 F.3d 781, 796 n.11, 19 A.D.D. 853, 1996 FED App. 0385P (6th Cir. 1996) (noting that "[p]laintiffs bear the burden of demonstrating that the desired accommodation is necessary to afford equal opportunity"); Geter v. Horning Bros. Management, 537 F. Supp. 2d 206, 209–10 (D.D.C. 2008) (ruling against § 3604(f)(3)(B) claim because plaintiff cannot show the requisite causation between his disability and the financial accommodation he requested from defendants).

The accommodation may be denied if there are reasonable alternatives available which would provide the necessary treatment for the specific handicap. Cases include Schwarz v. City of Treasure Island, 544 F.3d 1201 (11th Cir. 2008) (alternative zones available for halfway houses for recovering substance abusers); Men of Destiny Ministries, Inc. v. Osceola County, 2006 WL 3219321 (M.D.Fla. 2006) (county may enforce zoning prohibition of transient housing); McKivitz v. Township of Stowe, 769 F.Supp.2d 803, 827 (W.D.Pa. 2010) (accommodation was unnecessary where zoning allowed group homes in other locations); Bryant Woods Inn, Inc. v. Howard County, 124 F.3d 597 (4th Cir. 1997) (holding that zoning variance to allow expansion of group home for handicapped persons from eight to 15 residents was not reasonable accommodation required by FFHA because of parking problems created by existing facility, and expansion was not necessary, as almost 30 such homes with eight or fewer residents operated viably in county); Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment of Tp. of Scotch Plains, 284 F.3d 442 (3d Cir. 2002) (holding that FFHA does not require local land use authorities to engage in informational interactive process with developer seeking variance on behalf of the handicapped).

3. Equal opportunity to use and enjoy a dwelling. The FFHA requires only equal opportunity to use and enjoy a dwelling, not the granting of special preferences. Cases include Good Shepherd Manor Foundation, Inc. v. City of Momence, 323 F.3d 557, 561-64, (7th Cir. 2003) (rejecting § 3604(f)(3)(B) challenge to city's shut off of water supply to group home for developmentally disabled adults); McGary v. City of Portland, 386 F.3d 1259, 1261-64 (9th Cir. 2004) (the crux of a reasonable accommodation claim is a challenge not to discrimination against a disabled person, but rather to a requirement that on its face treats disabled and nondisabled persons alike); Janush v. Charities Housing Development Corp., 169 F. Supp. 2d 1133, 1137 (N.D. Cal. 2000)

(landlord need not consider § 3604(f)(3)(B) requests from all tenants, because "[u]nless a tenant has a disability, the reasonable accommodation issue does not arise"); Bryant Woods Inn, Inc. v. Howard County, Md., 124 F.3d 597, 605 (4th Cir. 1997) (FFHA "only requires an 'equal opportunity,' not a superior advantage" and therefore an accommodation is not required if it would advantage handicapped residents "on a matter unrelated to the amelioration of the effect of a handicap"); U.S. v. California Mobile Home Park Management Co., 29 F.3d 1413, 1418 (9th Cir. 1994) (handicapped parties cannot demand waiver of generally applicable fees, such as a monthly charge for parking, where such waiver would "extend a preference to handicapped residents" or put them "in a privileged position in relation to other residents"); Wisconsin Community Services, Inc. v. City of Milwaukee, 465 F.3d 737, 749 (7th Cir. 2006) (en banc) (§ 3604(f)(3)(B) "requires only accommodations necessary to ameliorate the effect of the plaintiff's disability so that she may compete equally with the non-disabled in the housing market"); Salute v. Stratford Greens Garden Apartments, 136 F.3d 293, 299–302 (2d Cir. 1998) (the law addresses the accommodation of handicaps, not the alleviation of economic disadvantages).

An accommodation must comply with neutral laws and regulations imposing equal requirements upon all dwellings as to health welfare and safety; those requirements include building code requirements. Cases include: City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432 (1985) (fn 8 upheld the constitutionality of ordinance which had the effect of excluding group home for the handicapped because it restricted dwelling units to single family, defined as no more than four unrelated persons, citing Village of Belle Terre v. Boraas, 416 US 1 (1974)); United States v. Village of Palatine, 37 F.3d 1230 (7th Cir. 1994) (municipality may determine that accommodation is not reasonable because of concerns for the safety of residents); Comcare, Inc. v. Metropolitan Government of Nashville & Davidson County, 1993 WL 757700 (MD Tenn. 1993) (group home required to comply with fire and building codes pursuant to FFHA); Forest City Daly Housing, Inc. v. Town of North Hempstead, 175 F.3d 144 (2d Cir. 1999) (no violation where building permit would not be granted to comparable traditional residences); J.W. v. City of Tacoma, Wash., 720 F.2d 1126, 1130 (9th Cir. 1983) (ordinance requiring special use permit was facially valid, upholding city's intent in health, safety and convenience); Developmental Services of NE v. City of Lincoln, 504 F.Supp.2d 714 (D.Neb. 2007) (no violation FFHA to deny adding fourth resident to group home); Keys Youth Services, Inc. v. City of Olathe, KS, 248 F.3d 1267 (10th Cir. 2001) (no violation of FFHA in denial of special use permit for group home based upon reasonable safety and property value concerns); Thornton v. City of Allegan, 863 F. Supp. 504 (W.D. Mich. 1993) (denial of a special use permit to operate a residential adult foster care facility for handicapped individuals in a central business district was not a violation of FFHA or US Constitution); Horbal v. City of Ham Lake, 393 N.W.2d 5 (Minn. Ct. App. 1986); Harding v. City of Toledo, 433 F.Supp.2d 867 (N.D.Ohio 2006) (spacing and other requirements as to group home were reasonable and non-discriminatory).

4. Application of FFHA requirements of SMR's request to the City. As set forth above, the FFHA requires SMR to prove that the requested accommodation is (1) reasonable; (2) necessary; and (3) to provide the handicapped individual equal opportunity to use and enjoy a dwelling. Each of those three requirements correspondences to the three requirements for a Use Variance under the City Code, namely that (1) the variance is reasonable under the circumstances and conditions involving SMR, that (2) the variance is necessary for the medical treatment of the handicaps and that (3) the

variance will not be detrimental to the public welfare and will comply with health, welfare and safety requirements. Therefore, SMR's request should be treated like all other requests which have been made to the City for variances over the years and should proceed in a neutral, non-discriminatory manner through the process, whatever the outcome may be. The citizens of Colorado Springs have a statutory right under the City Code (7.5.804) and under the Colorado and United States Constitutions (see Krystowiak v. Brisben Companies, 90 P.3d 850 (Colo. 2004) to participate in the variance/conditional use process, which should be promptly implemented and go forward accordingly.

Therefore I would request that you advise me that the City plans to proceed with SMR's application for a reasonable accommodation through its customary conditional use or variance process and that it will be pursuing the necessary notices and public hearing before the Planning Commission. I look forward to your response.

Sincerely,

ANDERSON, DUDE & LEBEL, P.C.

Lenard Rioth
Special Counsel

LR:LP

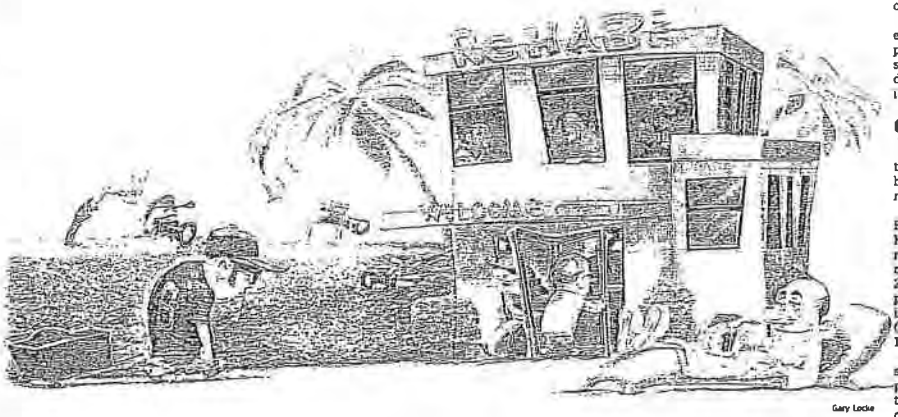
cc: Client

THE WALL STREET JOURNAL SUNDAY.

WSJ SUNDAY 10 THINGS

... Rehab Centers Won't Tell You

By Charles Passy



Gary Locke

1 **'We're not always that effective.'**

Amy Winehouse sang about it in a Top-10 hit. And a former first lady made it the key part of her legacy. We're talking rehab, as in the process of undergoing extensive—and sometimes costly—treatment for substance abuse, often in an inpatient setting.

But as much interest as there is in rehab, the fact remains that treatment doesn't always work in the long term. The National Institute on Drug Abuse estimates the relapse rate among drug addicts to be 40% to 60%.

Some rehab industry experts argue that the clinics themselves are partly to blame, saying they rely on cookie-cutter approaches to treatment. But others say addiction is simply a hard thing to beat, since it's a complex, lifelong problem.

"No treatment center will say, 'I'm going to get you sober and you'll stay sober' for life," says Kristina Wandzilak, founder and chief executive of Full Circle Intervention, a San Francisco-based treatment service.

2 **'Our success rates may mean little.'**

Relapse statistics notwithstanding, rehab centers often tout their effectiveness; many quote success rates of 70% or higher.

But much depends on how "success" is defined. In some cases, the figure may refer only to the completion rate—that is, the percentage of people who finish the program. In other cases, it could refer to a relatively short period of post-program sobriety—say, a year after completing treatment. And that figure may be questionable, as it could be a self-reported one.

The bottom line, says Akikur Mohammad, a psychiatrist who teaches addiction medicine at the University of Southern California, is that any success rate that sounds too good to be true probably is.

3 **'A pricier program isn't necessarily a better program.'**

At the spa-like rehab centers celebrities check into, the costs are high and the amenities follow suit.

Cliffside Malibu in California, for example, touts its "ocean-side views." (The cost? Up to $73,000 a month, according to TheFix.com, a site about addiction and recovery.)

But such programs don't always yield better results. For starters, experts say results depend on the quality and experience of the rehab center's counselors, and that many lower-cost programs, particularly those reliant on public funding, have just as high a standard (if not higher) for their staff.

Additionally, the pricier the program, the less incentivized it may be to push an addict into grappling with the issues at hand, says David M. Reiss, a psychiatrist who serves as a consultant to treatment centers.

4 **'Our staff may not be well-schooled.'**

Treatment counselors may be crucial to a program's success, but that doesn't mean they necessarily have advanced degrees.

A 2012 report from the National Center on Addiction and Substance Abuse at Columbia University found that only one state required providers of addiction treatment to have a master's degree. By contrast, 14 states didn't require any licensing or certification for such counselors, and 14 required only a high-school diploma or GED to obtain the proper credentials.

Of course, treatment centers can—and often do—go beyond the state requirement when it comes to hiring counselors.

5 **'We'll invade your neighborhood.'**

Many treatment centers base themselves in residential areas—often to the dismay of locals.

In recent years, clashes between community activists and rehab-center operators have arisen everywhere from Brooklyn, N.Y., to Malibu, Calif.

To quote a report from the U.S. Department of Health and Human Services: "Residents may fear that property values will decline, and merchants may be concerned that crime will increase."

Rehab operators counter that they work with locals and that the facilities can be a positive because they bring extra eyes to the community.

Either way, addiction experts say there's a reason treatment centers are in residential communities: The sober settings help in terms of acclimating addicts to the real world as part of their recovery process.

6 **'We may be running a scam.'**

Rehab center or scam operator? It may be hard to tell the difference.

Consider the situation in California, where numerous publicly funded treatment centers were found to be engaging in questionable practices, as uncovered in the recent "Rehab Racket" series, conducted by the Center for Investigative Reporting and CNN.

To quote from a summation of the series: "Clinics bused in teens from foster-care homes who didn't have addictions ... They billed for counseling held at times when counselors were not working." The series also estimated that $94 million in federal and state funding was paid out in the past two fiscal years to clinics that have engaged in such deception.

7 **'Some of our therapies aren't exactly scientific.'**

Many rehab centers tout new and emerging, nontraditional treatment methods, from equine therapy to yoga.

Perhaps the most popular of these is acupuncture, which is offered at several hundred clinics in the U.S. and Europe, according to the 2012 report from the National Center on Addiction and Substance Abuse at Columbia University.

The idea behind many of these alternative approaches is that to heal the body mentally you have to begin by healing it physically.

But those who track the rehab industry say there isn't a body of research to support the claims of many alternative therapies.

8 **'Be prepared to get in line for services.'**

The good news for those who couldn't afford addiction treatment—or didn't have an insurance plan that covered it: The Affordable Care Act mandates that "all health insurance sold on health-insurance exchanges or provided by Medicaid to certain newly eligible adults...must include services for substance-use disorders," as per the Office of National Drug Control Policy.

Now for the bad news: The expansion of such coverage may put a crush on the treatment system—to the point that addicts may have to wait for services.

9 **'Private equity's gain could be a patient's loss.'**

Given what some rehab centers charge, it's perhaps inevitable that investors would take notice of the industry.

Indeed, private-equity firm Bain Capital purchased CRC Health Group, which runs treatment centers throughout the country, for $723 million in 2006. Since then, Bain has expanded its investment by adding more clinics to CRC's roster (the current number stands at 140-plus).

Some in the industry fear such developments could compromise treatment, since investors are always looking to trim costs.

Others who track the rehab world believe there's a positive side to outside investment in that it could translate into well-financed centers pumping money into newer forms of treatment.

10 **'You may be better off at home.'**

The month-or-longer stint in rehab may be the classic treatment model, but it isn't the only option.

And depending on a patient's situation, it may not even be the best, according to many in the field. Some studies have shown that success rates—in terms of maintaining sobriety—are just as high for outpatient programs as inpatient ones.

So does anyone need residential rehab?

The short answer is yes, especially in cases where medical issues may also arise, say rehab experts. Inpatient rehab affords addicts a chance to retreat from their everyday drug- or alcohol-filled world.

As Anne M. Fletcher, author of "Inside Rehab," put it, "It's hard for me to imagine some of the [patients] I met 'makin' it' " in a "program that allowed them to go home at night."

AMENDMENT TO THE LAND DEVELOPMENT CODE (Approved)

Commissioner Dillon moved that the following Resolution be adopted:

BEFORE THE PLANNING COMMISSION

OF THE COUNTY OF EL PASO

STATE OF COLORADO

RESOLUTION NO. LDC-14-001

WHEREAS, the El Paso County Development Services Department requests approval of Amendments to Section 5.2.2, Table 5-1 of the Land Development Code as herein described; as well as conforming amendments throughout the Code;

WHEREAS, a public hearing was held by this Commission on May 20, 2014; and

WHEREAS, based on the evidence, testimony, exhibits, comments of the El Paso County Development Services Department, comments of public officials and agencies, and comments from all interested parties, this Commission finds as follows:

1. That proper publication and public notice was provided as required by law for the hearing before the Planning Commission.

2. That the hearing before the Planning Commission was extensive and complete, that all pertinent facts, matters and issues were submitted and that all interested parties were heard at that hearing.

3. That all data, surveys, analyses, and studies, as are required by the State of Colorado and El Paso County have been submitted, reviewed, and found to meet the intent of the General Provisions of the El Paso County Land Development Code.

4 That the proposal shall hereby amend the Land Development Code for El Paso County.

5. That for the above-stated and other reasons, the proposed Amendments are in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of El Paso County.

NOW, THEREFORE, BE IT RESOLVED that the following Amendments to Section 5.2.2, Table 5-1 of the Land Development Code of El Paso County be approved, as well as conforming amendments throughout the Code;

See Exhibit A

AND BE IT FURTHER RESOLVED that the aforementioned revisions to the Land Development Code are represented on the attached Exhibit "A" by underlining (additions) and strike-through (deletions).

AND BE IT FURTHER RESOLVED that, in the case of any inconsistency with these amendments and any previous Zoning Regulations, these revisions shall prevail;

AND BE IT FURTHER RESOLVED that this Resolution and the recommendations contained herein be forwarded to the Board of County Commissioners for its consideration.

Commissioner Hannigan seconded the adoption of the foregoing Resolution.

The roll having been called, the vote was as follows:

Commissioner Trowbridge	aye
Commissioner Dillon	aye
Commissioner Hannigan	aye
Commissioner Gioia	nay
Commissioner Egbert	nay

The Resolution was adopted by a vote of 3-2 by the Planning Commission of the County of El Paso, State of Colorado.

DATED: May 20, 2014

Exhibit A to Planning Commission Resolution

(Changes from current LDC are highlighted)

~~**Adult Care Home**~~

~~A County certified residential facility for the 24-hour care of no more than 15 residents in a non-medical facility for disabled adults, 18 years of age or over, who do not require 24-hour medical care and who are able to perform, with or without assistance, most activities of daily living.~~ *(Deleted originally)*

Family

An individual, or 2 or more persons related by blood, marriage, adoption, or as guardian and ward, or a group of not more than 5 persons, excluding servants, who are not so related, living together in a dwelling unit. A family shall not include more than one person required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S., as amended, unless related by blood, marriage or adoption, or in foster care.

Comment [MG1]: Modification at Planning Commission

Rehabilitation Facility

An institutional use type facility, and not a group home, whether public, quasi-public, not-for-profit, providing accommodation, treatment and medical care for patients suffering from alcohol or drug-related illness.

Group Home

A home intended to provide a normal residential family setting for certain unrelated groups of people and limited to group homes for persons with mental illness, group homes for developmentally disabled persons, group homes for the aged, and group homes for handicapped or disabled persons.

Group Home for Handicapped or Disabled Persons

A group home for persons with mental or physical impairments which substantially limit one or more major life activities and including such additional necessary persons required for the care and supervision of the permitted number of handicapped or disabled persons. "Handicap" and "disability" have the same legal meaning. A person with a disability is any person who has a physical or mental impairment that substantially limits one of more major life activities, has a record of such impairment; or is regarded as having such an impairment. A physical or mental impairment includes, but is not limited to, hearing, visual, and mobility impairments, alcoholism, drug addiction, mental illness, mental retardation, learning disability, head injury, chronic fatigue, HIV infection, AIDS, and AIDS Related Complex. The term "major life activity" may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. Group homes for handicapped or disabled persons, particularly as they relate to recovering (not currently using) alcoholics and persons with drug addictions, may also be known as sober living arrangements.

Group Home for the Aged (including Assisted Living Residences)

A group home for persons who are 60 years of age or older, do not need nursing facilities or skilled and intermediate care facilities, and who desire to live in normal residential surroundings. The criteria, requirements, and restrictions for group homes for the aged shall be those prescribed by C.R.S. §30-28-115(2) (b) (except for distance separations) and in this Code. Group homes for the aged include assisted living residences as defined in C.R.S. §25-27-102 (1.3). "Assisted living residence" means a residential facility that makes available to three (3) or more adults not related to the owner of such facility, either directly or indirectly through an agreement with the resident, room and board and at least the following services: personal services; protective oversight; social care due to impaired capacity to live independently; and regular supervision that shall be available on a twenty-four-hour basis, but not to the extent that regular twenty-four-hour medical or nursing care is required. The term "assisted living

residence" does not include any facility licensed in this state as a residential care facility for individuals with developmental disabilities, or any individual residential support services that are excluded from licensure requirements pursuant to rules adopted by the Department of Public Health and Environment.

Group Home for Developmentally Disabled Persons (including Intellectually and Developmentally Disabled Persons)
A State-licensed group home for persons with developmental disabilities or intellectual and developmental disabilities, as those terms are defined in C.R.S. §§ 27-10.5-102(11)(a) and 25.5-10-202(26)(a). "Developmental disability" has the same meaning as "intellectual and developmental disability." The criteria, requirements, and restrictions for group homes for developmentally disabled persons shall be those prescribed by C.R.S. §§ 30-28-115(2)(a), §27-10.5-109, and 25.5-10-214, and any regulations implemented by the Department of Public Health and Environment, the Department of Health Care Policy and Financing, and the Department of Human Services in support of this statutory provision, and elsewhere in this Code. This includes a community residential home as defined in C.R.S. § 25.5-10-202(5).

Group Home for Persons with Mental Illness
A State-licensed group home for persons with mental illness, as that term is defined in C.R.S. §27-65-102(14). The criteria, requirements, and restrictions for group homes for persons with mental illness shall be those prescribed by C.R.S. §30-28-115(2) (b.5) (except for separation requirements) and elsewhere in this Code. The term group home for persons with mental illness shall not include any facility licensed as a residential child care facility.

5.2.2. Child Care Centers, Family Care Homes, and Group Homes
The following standards apply, subject to the provisions and limitations of the County and State Department of Human Services and Department of Public Health and Environment.

(A) Separation Requirements
No family care homes, child care centers, or group homes, excluding group homes for handicapped or disabled persons, shall be located on an adjacent lot or parcel or within 500 linear feet along the same road from the lot or parcel boundary lines as another family care home, child care center, or applicable group home except for those facilities that: (1) qualify as a single-family dwelling and have an occupancy in the family care home, child care center, or group home of fewer than 6; or (2) where the family care home, child care center, or group home is located within a commercial zone district.

(B) Parking, Screening and Buffering
The facility shall comply with the parking standards of the Land Development Code. All commercial components, such as parking lots and playgrounds, shall be screened and buffered from neighboring residences and uses. For family care homes, child care centers, or group homes, excluding group homes for handicapped or disabled persons, the County may request a transportation plan showing how the operators of the facility intend to meet the transportation needs of the residents of the facility. The sufficiency of the transportation plan may be considered by the County in reviewing an application but may not, by itself, constitute grounds for denying the application. *See*, C.R.S. § 30-28-115(2.5).

(C) Facility Allowances and Applicable Review Processes
(1) A family care home, child care center, or group home shall be considered an allowed use or may require a special use permit depending on the specific facility type and number of

residents/enrollment as shown in Table 5.3 when located within a forestry, agricultural, and residential zone district, and shall not be considered a second principal use when operated in conjunction with or within a residence on the property. Additional necessary persons required for the care and supervision of the permitted number of handicapped or disabled persons are allowed.

(2) A family care home, or group home shall not include ~~more than one~~ any person required to register as a sex offender pursuant to C.R.S. § 18-3-412.5, as amended, unless related by blood, marriage or adoption or in foster care.

Comment [MG2]: Modifications added at Planning Commission

(3) A family care home, child care center, or group home shall maintain compliance with any building codes, fire codes, and health codes based upon the occupancy classification and number of residents and necessary persons for care of the residents.

(4) Copies of any applicable current state or local certifications, licenses or permits for the group home shall be maintained on the premises.

(5) All existing family care homes, child care centers, and group homes shall meet these standards, except separation requirements at Section 5.2.2(A), by December 31, 2014, regardless of pre-existing circumstances, and no nonconforming rights are hereby established.

(D) Standards applicable only to Group Homes

The Colorado General Assembly has declared that state-licensed group homes for no more than 8 developmentally disabled persons or intellectually and developmentally disabled persons is a matter of statewide concern and is a residential use of property for zoning purposes, specifically including single-family residential zoning. C.R.S. § 30-28-115(2)(a). The Colorado General Assembly has declared that state-licensed group homes for no more than 8 persons with mental illness is a matter of statewide concern and is a residential use of property for zoning purposes. C.R.S. § 30-28-115(2)(b.5).

(1) A group home for handicapped or disabled persons shall quarterly (by March 31, June 30, September 30 and December 31 of each year), and otherwise upon request by the County, provide evidence and/or demonstrate to the Development Services Department that the residents in the group home are handicapped individuals and entitled to protection under the FHAA, ADA, ~~or and~~ the Rehabilitation Act.

Comment [MG3]: Modification at Planning Commission

(2) Meetings or gatherings on-site at a group home for handicapped or disabled persons that are consistent with a normal residential family setting shall be allowed and shall only be for residents, family of residents, and necessary persons required for the support, care and supervision of the handicapped or disabled persons. This does not permit conducting ministerial activities of any private or public organization or agency or permit types of treatment activities or the rendering of services in a manner substantially inconsistent with the activities otherwise permitted in the particular zoning district. See, C.R.S. § 30-28-115(2)(c).

Table 5-3 Use Table and Occupancy Limits for Family Care Home, Group Home and Child Care Facilities in Forestry, Agricultural, and Residential Zone Districts

Use Type	Allowed Use (Max. Occupancy/ Enrollment)	Special Use (Occupancy/ Enrollment)
Family Care Home		
Family Foster[2]	8	NA
Day Care Home[2]	12	13 or more
Adult Day Care	8	9-12
Specialized Group Facility[2]	8	9-12
Child Care Center[1]		
Large Day Care Center[2]	NA	13 or more
Small Day Care Center[2]	NA	12 or fewer
Nursery[2]	NA	As Established by State
Day Camp[2]	NA	As Established by State
Center for Developmentally Disabled[2]	8	9 or more
Crisis Center[2]	8	9 or more
Residential Camp[2]	NA	5 or more
Trip Camp[2]	NA	5 or more
Day Treatment Center[2]	8	9 or more
Residential Child Care Facility[2]	8	9 or more
Group Homes[3]		
Persons with Mental Illness[2]	8	9 or more
Developmentally Disabled[2]	8	9 or more
Aged (Assisted Living Residence)[2]	8	9 or more
Group Home for Handicapped or Disabled Persons	~~12~~ 8	~~13~~ 9 or more

Notes:
[1] Child care centers are allowed as an accessory use when operated in the same building as a religious institution.
[2] As defined by State law and rules and regulations.
[3] Individual requests for accommodation may be considered by the DSD Director.

The enrollment or occupancy numbers in this table do not include additional necessary persons required for the care and supervision of the enrollees or occupants. Enrollment or occupancy numbers may be affected by licensing or building code requirements.

Comment [MG4]: The El Paso County Planning Commission recommended this number be 8. Staff recommends the number of 12.

Table 5-1. Principal Uses.

Use Type	Agricultural Zoning Districts				Residential Zoning Districts											Industrial Zoning Districts					Subject to Specific Use Standards?	Site Development Plan Required to Initiate Use?					Subject to Specific Use Standards?	Site Development Plan Required to Initiate Use?	Site Plan Required to Initiate Use?
	F-5	A-35	A-5	RR-5	RR-2.5	RR-0.5	RS-20000	RS-6000	RS-5000	RM-12	RM-30	RT	MHP	MHS	MHPR	RVP	CC	CR	CS	I-2	I-3	C-1	C-2	I-1	R-4				
Acid Manufacturing																					S			S			YES	
~~Adult Care Home~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~	~~A[4]~~											~~YES~~		~~YES~~
Agricultural Business		S																									YES	
Agricultural Stand	A	A	A	A																						YES		YES
Airstrip, Personal		S																									YES	YES
Amusement Center, Indoor																	S	A	A			A	A	A			YES	
Amusement Center, Outdoor	S	S	S[2]														S	S	S			S	S	A			YES	
Animal Day Care Facility																		A	A	A				A		YES	YES	
Animal Refuge	S	S	S	S																							YES	
Auction Facility		S	S														S		A				A	A		YES	YES	
Automobile and Boat Storage Yards																	S		A	A	A			A		YES	YES	
Automobile and Trailer Sales																	S	S	A	S				A			YES	
Bakery, Retail																	A	A	A					A			YES	
Bakery, Wholesale																			A	A	A			A			YES	
Bar																	A	A	A			A	A	A			YES	
Barber/Beauty Shop																	A	A	A			A	A	A			YES	

delete

Notes:

"A" = Allowed Use, "S" =Special Use, "T"= Temporary Use

[1]Minimum lot area of 5 acres irrespective of nonconforming lot or parcel status

[2]Minimum lot area of 10 acres irrespective of nonconforming lot or parcel status

[3]Minimum lot area of 35 acres irrespective of nonconforming lot or parcel status

[4]Use may be an allowed use or special use depending on size and other criteria. See specific use criteria.

[5]A minimum of 1acre is required for a private stable.

Use Type	Agricultural Zoning Districts				Residential Zoning Districts												Industrial Zoning Districts					Subject to Specific Use Standards?	Site Development Plan Required to Initiate Use?				Subject to Specific Use Standards?	Site Development Plan Required to Initiate Use?	Site Plan Required to Initiate Use?
	E-5	A-35	A-5	RR-5	RR-2.5	RR-0.5	RS-20000	RS-6000	RS-5000	RM-12	RM-30	RT	MHP	MHS	MHPR	RVP	CC	CR	CS	I-2	I-3	C-1	C-2	M	R-4				
Peddler Sales																	T	T	T			T	T	T		YES		YES
Petroleum Refining																					S			S			YES	
Plaster Manufacturing																					S			S			YES	
Prison, Private		S															S		S	S	S			S			YES	
Proprietary School																	A	A	A	S				A			YES	
Public Building, Way or Space	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	YES	YES	
Public Park and Open Space	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	YES		
Publishing Companies																			S	A	A			A			YES	
Race Track		S^2	S^2																		S			A			YES	
Ranch	A^3	A^3	A^3	A^3																								
Recreation Camp	S	S	S	S																							YES	
Recreational Vehicle and Boat Storage																	S		A	A	A			A			YES	
Recycling Facility																					A			A			YES	
Rehabilitation Facility Delete	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	S	S	~~S~~					~~D~~	~~D~~	~~D~~			~~D~~	~~D~~	~~D~~					
Religious Housing		S								A	A																YES	
Religious Institution	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			A	A	A			YES	
Rendering Plant		S	S^2																		S			S			YES	

Notes:

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[1]Minimum lot area of 5 acres irrespective of nonconforming lot or parcel status

[2]Minimum lot area of 10 acres irrespective of nonconforming lot or parcel status

[3]Minimum lot area of 35 acres irrespective of nonconforming lot or parcel status

[4]Use may be an allowed use or special use depending on size and other criteria. See specific use criteria.

[5]A minimum of 1acre is required for a private stable.