TOLEDO-LUCAS COUNTY PLAN COMMISSIONS

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THOMAS C. GIBBONS, DIRECTOR

DATE: November 13, 2019
REF: M-10-18

TO: President Matt Cherry and Members of Council, City of Toledo

FROM: Toledo City Plan Commission, Thomas C. Gibbons, Secretary

SUBJECT: Study of Residential Drug and Alcohol Treatment Centers

The Toledo City Plan Commission considered the above-referenced request at its meeting on Thursday, November 7, 2019 at 2:00 P.M.

GENERAL INFORMATION

Subject

Request	-	Study of Residential Drug and Alcohol Treatment Centers
Applicant	-	Toledo City Council

STAFF ANALYSIS

Update

This case was previously heard at the February 14th Toledo City Plan Commission hearing and the March 20th Zoning and Planning Committee meeting. It was deferred for six months by Toledo City Council to allow additional time to study the issue and address concerns presented at the March 20th meeting and referred back to the Plan Commission staff at the August 14th meeting as the six month, September 18th, deadline approached. Additionally, an extension of the moratorium on Drug & Alcohol Facilities in District 4 is set to expire on December 31, 2019.

An update on activity since the deferral in March follows:

Meetings were held with public agencies and the Law Department to review some of concerns from the March 20th meeting. Staff agreed to adjust the classification criteria of a residential facility to focus on licensed medical treatment and exempt informal treatment such as house meetings from this category. This shifts most recovery housing to a "Household Living" or "Group Living" use based solely on the number of residents and the configuration of the structure. The most common configuration is a "Group Rental" land use, where individuals have separate bedrooms/beds, but share a larger communal living space.

STAFF ANALYSIS (cont'd)

Update (cont'd)

The separation of longer term housing from medical treatment adds clarity to the "Drug and Alcohol Residential Facility" use, by focusing on the non-residential services provided and the number of individuals at the facility similar to other use categories, such as a "Nursing Home." It also is consistent with state laws that allow local governments to regulate a "Residential Facility, Large" differently than a "Residential Facility, Small" as the only difference between these categories is the number of individuals residing at the facility.

A review of "Drug & Alcohol" facilities since March 20th was conducted. Four (4) additional Special Use Permits (SUPs) have been requested, including two (2) in District 5. This brings the total number of legally approved facilities in the city to nineteen (19) and changes the percentage breakdown by district. The eight (8) facilities in District 4 now account for 42.1% of all SUPs down from 50% earlier in the year, while District 5 saw the largest increase with four (4) total facilities and 21% of all legally approved SUPs. Districts 2 and 6 remain unchanged with no approved SUPs. An updated map of SUP applications is available in Exhibit "A" with a full listing of SUPs included as Exhibit "B".

Six (6) additional treatment facilities requested a license with the state, one of those was outside city limits. Adding in the four (4) SUPs, this brings the total number of facilities to fifty four (54) in Toledo and sixty one (61) in Lucas County. Individual council districts saw modest shifts in percentages due to the larger overall based compared to SUPs. Districts 2, 4, and 6 saw modest declines, with District 4 declining 1.9%, from 55.6% to 53.7% of all facilities within Toledo. An updated map of all facilities is included as Exhibit "C".

Part of this change can likely be attributed to the moratorium in District 4, but on a broader level it may also be driven by an increased awareness given the larger, ongoing policy discussions in the city. Conversations with local treatment providers suggested a stronger focus on data concerning areas of greatest need over the location of other treatment providers, which is understandable given the challenges that come with data gathering. It is further reinforced by the Medicaid claims data, in Exhibit "D", showing that mental health services are accessed by residents throughout the City and not focused in one particular area.

Regulation will address part of the issue, but a larger question remains for providers operating without local approval. It also serves as a reminder that regulations need to be balanced to ensure the broadest level of compliance given that thirty five (35) of the fifty four (54) facilities operate without a SUP. Make the rules too difficult or burdensome and the city runs the risk of reducing compliance as businesses decide that risks of not complying outweigh the benefits. This in turn requires increasing time spent on monitoring and enforcement to the detriment of other services. Additional resources would likely be required given that out of the hundreds of SUPs approved in the city only a handful have been reviewed for compliance and fewer revoked.

STAFF ANALYSIS (cont'd)

Update (cont'd)

This balance is further illustrated in the observations and conversations with other zoning departments in the State of Ohio. In fact, zoning research frequently reveals that Toledo is one of the most regulated land use communities and it holds true for both non-residential and residential treatment facilities. As discussed in the original report, Toledo is the only community of Ohio's largest cities to specifically regulate non-residential facilities from other medical services and one of three (3) of the seven (7) communities surveyed that regulate residential treatment facilities from other types of group living facilities. Communities like Columbus, Dayton, and Cleveland are all dealing with the same opioid challenges but with fewer regulations and no current plans for modification.

After reviewing the initial recommendations from March, included as Exhibit "F" of this report, staff maintains that the previous proposal strikes an ideal balance between concerns from public agencies on access or opportunities for needed services and residents and elected officials on concentrations in specific areas of the community. The lowered regulatory burden when spacing is not an issue will serve as a catalyst to encourage compliance while still providing the city an avenue to review facilities when concentration or spacing is an issue. The regulations as proposed will reduce the concentration of facilities in a few areas and encourage the location of a vital public service throughout all neighborhoods. A potential impact of the changes on available land in the city is included as Exhibit "G" of this report.

Original Report

The request is a study to review residential drug and alcohol treatment centers by Toledo City Council in order to understand better the saturation of these facilities in specific locations, to examine any adverse impacts, and recommend changes that can be made to ensure a more equitable distribution throughout Toledo. As part of this request Toledo City Council also enacted a moratorium on new facilities in Council District Four until April 15, 2019 and extended until December 31, 2019 to provide time to examine this issue. Given the complexities surrounding this use type staff took a comprehensive approach to this request and examined all facilities related to drug and alcohol treatment. This subject has a number of topics that should be addressed and what follows provides an overview that will serve as a guide moving forward.

STAFF ANALYSIS (cont'd)

Terminology

Treatment terminology differs between mental health professionals and local zoning regulations. From a mental health standpoint there are four categories for treatment facilities: outpatient, detox centers, residential, and recovery housing. Outpatient facilities provide treatment without overnight stays with clients visiting on an as needed basis. Detox centers provide treatment and short term stays (typically 3-10 days) in a clinical setting and are designed to help someone dealing with withdrawal symptoms. Residential facilities provide treatment and intermediate term stays (typically 30-90 days) in a structured and programmed environment. Typical services include medical treatment, counseling, group therapy, and potentially other social services. Recovery houses provide little to no treatment and the longest term stays (typically 30 days and longer) and are the closest of all four categories to what would fit a residential use zoning definition. These facilities provide a peer supported environment for individuals who need assistance maintaining sobriety while transitioning back into society. Treatment does not typically occur on-site except for informal activities such as house meetings. Residents often continue to receive outpatient treatment on a limited basis.

Detox tends to be the first step in treatment and the most intense, followed by a residential facility, and ending with limited outpatient services and if necessary a recovery house stay. A key distinction between a residential facility and a recovery house is the scale of treatment. An individual at a residential facility may receive up to thirty hours of treatment a week compared to five hours a week at a recovery house. A residential facility also tends to be a more controlled environment compared to a recovery house where there are very little restrictions on access to and from the facility. Recovery housing is not intended for individuals receiving intensive treatment services. Residents usually have completed the most intensive parts of treatment and need a stable housing environment with peer support before transitioning back on their own. Providers interviewed for this study estimated that the need for recovery housing could be as high as fifty (50) percent of all treatment cases.

Part of the challenge lies with funding. There are funds available to build these facilities, but limited dollars to run them. State rules also restrict the use of public dollars for non-treatment purposes like room and board. The Mental Health and Recovery Service Board (MHRSB) of Lucas County assists with a small stipend per individual to help offset the room and board costs for a limited number of recovery housing beds, but the need exceeds available funds. Some providers mix categories and use recovery housing as a home base while transporting residents to an outpatient facility for treatment and in a sense function as a residential facility creating additional complexities with this use. As a result, recovery housing is the most complicated facility type to regulate. They can easily mix a residential use with treatment services, do not require licensing by the state, and are not typically operated by providers because of funding issues.

STAFF ANALYSIS (cont'd)

Terminology (cont'd)

Local zoning regulations have two classifications for these drug treatment facilities: residential and non-residential. Both types require a Special Use Permit approved by City Council, are subject to a 500' spacing requirement and limited to one per block in specific zoning districts. A residential treatment facility requires Multiple Dwelling Residential RM12, RM24, RM36, or Regional Commercial CR zoning. A nonresidential facility requires Mixed Commercial-Residential CM, Storefront Commercial CS, Regional Commercial CR, or Institutional Campus IC zoning. A recovery house is considered a residential drug treatment facility if any medical treatment occurs at the property. Otherwise it is considered housing and based on the configuration of the structure. This is typically classified as a group rental where and in residential districts must be located along a major street and limited to a maximum of three individuals.

Data Sources

The next item to consider is the current locations of facilities. It can be a challenge not only to gather and verify this type of information, but to also maintain it since facilities can open and close within a short period of time. Two data sources were used for this study: City of Toledo Special Use Permit (SUP) data and licensing information from the Ohio Department of Mental Health and Addiction Services (OMHAS). OMHAS data used in the study was requested, compiled and verified by the Mental Health and Recovery Service Board of Lucas County as of May 1, 2018. Crime data for 2018 was reviewed by our office with a focus on concentrations of crime, but was not included due to the difficulty of showing a relationship between crime and a single variable.

There are limitations with the SUP and OMHAS data. First, SUP data does not show active facilities only facilities that have filed a SUP. Second, OMHAS licensing is valid for a specific time period, sometimes up to three years. It is possible that some of these facilities have closed, but this will not be reflected in OMHAS data until the licenses lapses. Third, facilities can provide multiple levels of treatment, including treatment unrelated to substance abuse, and the MHRSB of Lucas County classified facilities based on board knowledge of the services provided and the most restrictive type of treatment first. Fourth, providers seeking state Medicaid dollars are required to register with OMHAS. However, there is always a possibility that some providers would forgo this licensing and only accept federal Medicaid, private insurance, cash, or donations. Additions to the facility list were made by the MHRSB and our office where information was available.

It is also important to note that in order to qualify for Medicaid an individual must live at a certain threshold of the poverty level. This means that facilities shown in the OMHAS data are more likely to disproportionately correspond with lower income neighborhoods where concentrations of poverty are more prevalent. Conversely, those who can afford to pay out of pocket for services would likely look at more desirable destinations for recovery.

STAFF ANALYSIS (cont'd)

Data Analysis

A review of SUP data revealed that in the past eleven years there have been seventeen (17) requests for SUPs to operate residential or non-residential drug treatment facilities. Fourteen (14) of the seventeen (17) were applied in 2014 or later. Only two (2) facilities were not approved. District Four received eight (8) of the fifteen (15) applications. Of those eight (8) applications, five (5) received a spacing waiver in order to operate. Those were the only facilities to receive spacing waivers. It should be noted that there were four additional SUPs requested since the original report bringing the total to twenty one (21) facilities. This information is included as Exhibit "A" and Exhibit "B" of this report.

Data provided by the MHRSB of Lucas County showed that there were forty-five (45) facilities located in the City of Toledo with six (6) additional facilities in Lucas County. Twenty-five (25) of the forty-five (45) facilities were located in District Four. This equates to fifty-five (55.6) percent of all facilities within one council district. The remaining facilities were more or less evenly distributed among the five remaining districts. It should be noted that there has been five (5) additional facilities that requested licensing at the state level. With the four (4) additional SUPs the total increases to fifty four (54) facilities located within the City and decreases the District 4 percentage to 53.7% of all facilities. This information is included as Exhibit "C" of this report.

The disconnect between the number of facilities in the OMHAS data and the SUP data is noticeable. If ten additional years of SUPs were reviewed there would only be two additional facilities since 1997. Some of this can be explained by grandfathered facilities that preceded the current zoning regulations. However, it is an unlikely explanation for thirty five (35) of the fifty four (54) facilities, which equates to sixty-five (65) percent of the updated list of all facilities. A more plausible explanation for many of these facilities is that many were opened without local zoning approval. This was also an item that providers mentioned during interviews. Identifying these facilities was unfortunately outside the scope of what could be accomplished in the specified time frame.

Provider Interviews

Telephone interviews were conducted with three local providers to better understand their decision making process when locating new facilities as well as gain a broader perspective on the subject of treatment and regulations. Providers interviewed for this study had experience opening facilities both inside and outside of Toledo. Opening a facility in Toledo was generally viewed as more challenging compared to nearby communities such as Sylvania Township or Perrysburg Township. In fact, facilities that were approved in Toledo were actually opened in other nearby communities due to unexpected costs or substantial delays in the review process.

STAFF ANALYSIS (cont'd)

Provider Interviews (cont'd)

When asked about the factors considered for opening new facilities providers offered a number of responses. The most emphasized factor was the location relative to areas of greatest need. These were frequently identified as the neighborhoods around Downtown, the Old South End, and East Toledo. Other factors included: access to public transportation, cost relative to square footage, proximity to other facilities for staffing and treatment purposes, regulatory reviews and the previous use of the building.

The focus on greatest need is due in part to the challenge of making sure that facilities are easily accessible for the people they are intended to serve. Most providers do not specifically track transportation but indicated that walking, public transportation or rides from others are the most common ways clients get to treatment. As a result, outpatient facilities tend to be located closer to the greatest concentration of clientele because of limited access to transportation and the fact that these services are provided over a longer time and require a higher number of trips to and from the facility. There is more flexibility for locating residential treatment in more remote areas because transportation is usually only needed once when entering and once when leaving. This distinction is also reflected in local parking requirements for a residential facility compared to non-residential.

Discussion also centered around state changes in 2017 that allowed for-profit enterprises access to Medicaid dollars for drug treatment. This change along with the scale of the opioid crisis in Ohio has attracted significant interest from out-of-state providers. This appears to have come at the expense of local providers who recently have been forced into difficult financial choices, including layoffs. The concern is that out-of-state providers will exit the community once the funding ends creating a void in the community for mental health services. This has tempered future plans for some providers who believe that the Toledo area may already be at or near capacity based on existing beds in the area, underutilized facilities, and upcoming changes to state funding. Others are still considering expansion plans provided that capital can be secured.

Data provided by the MHRSB of Lucas County offered a snapshot of where clients who received alcohol, other drug, and mental health treatment resided. The information was broken down for Toledo and non-Toledo residents, by council district, and by race. It was compiled using Medicaid and MHRSB of Lucas County claims for a one-year period starting July 1st, 2016 through June 30th, 2017. The information shows that 31,771 individuals received some level of mental health treatment in Lucas County and that 23,369 individuals or seventy-three (73.5) percent resided in Toledo. Council Districts Three and Four had the highest percentage of Toledo residents with 5,279 individuals or twenty-two (22.6) percent and 5,473 individuals or twenty-three (23.6) percent respectively. A complete summary of the information is included as Exhibit "D" of this report. It is important to note that claim data does not distinguish drug treatment from other forms of mental health.

STAFF ANALYSIS (cont'd)

Toledo Regulations

As outlined earlier, drug treatment facilities require a Special Use Permit in most zoning districts. The Special Use Permit typically takes 90-120 days to complete. It requires hiring a design professional to prepare plans, scheduling a neighborhood meeting, and attending at least two public hearings: one for the Toledo Plan Commission and one for Zoning and Planning Committee of City Council. An applicant is also required to file with Building Inspection for an Occupancy Permit along with any proposed internal changes. This usually requires interior plans prepared by a licensed architect in the State of Ohio. If the proposed use falls under a different building code than the previous use, changes will be required to the building. Providers who went through this process noted the amount of changes required and revisions and delays experienced during the review process. However, these building regulations are necessary for the general health, safety, and welfare of the public.

The building permit process is fairly standard throughout Ohio as all communities are subject to the same state building codes. The biggest adjustment usually occurs when providers identify a facility with a similar previous use and find out during the Building Permit review that the building classifications are actually considered different and that structural changes need to be made.

Research

Staff researched six (6) of the largest cities in Ohio to understand the issues facing other communities and how they ae addressing the challenges from the opioid crisis. This included: Columbus, Cincinnati, Cleveland, Akron, Dayton, and Youngstown. Zoning regulations were examined along with follow-up emails and telephone calls with each City. A brief summary follows with the full information is included as Exhibit "E" of this report. It should be noted that regulations were generalized in order to assist with analysis and are in no way illustrative of the complexity contained in some zoning codes.

A summary of key findings includes:

- Recovery Houses: This category had the most variation in regulations. Two (2) communities allow as a group rental with no stipulations, two (2) communities allowed as residential facilities with some stipulations, and two (2) communities specifically classified as drug treatment and are allowed only in commercial, industrial or institutional districts.

- Residential Drug Treatment: Four (4) communities did not distinguish a residential drug treatment use from other residential facilities. Smaller facilities (between 1-5) were permitted in most single family districts, sometimes with stipulations. Larger facilities (6-16) were allowed in multi-family, commercial, and industrial districts, sometimes with stipulations.

STAFF ANALYSIS (cont'd)

Research (cont'd)

- Spacing/Conditional Uses/Licensing: Three (3) communities require spacing from other residential facilities, two (2) communities require licensing for residential facilities, and four (4) communities allow larger facilities in multi-family residential subject to conditional uses.

- Outpatient/Intensive Inpatient (Detox): Four (4) communities permit outpatient/intensive inpatient facilities by right in most commercial districts. Two (2) communities permit intensive inpatient in institutional districts only.

Conclusions
(Note: numbers modified below to reflect updates since original report was published.)

The first item to consider is the approach to waivers. There would be four fewer facilities in District Four had waivers not been granted. Spacing is a widely used zoning tool to ensure that uses are not concentrated in a specific area. Treatment facilities also likely benefit from being spread out in the community rather than concentrated because of the need to normalize and integrate individuals back into the community. Examining a higher burden on hardships is something to be considered.

Second, the disparity between the number of approved SUPs (19) and the number of facilities from the MHRSB of Lucas County data (61) cannot be explained by grandfathered locations alone. This information could be explored in greater detail with the goal of identifying the number of facilities that may have opened illegally. It would also address comments heard during the interview process concerning fairness, especially for providers who followed the rules and went through the SUP process. This would require cooperation from multiple departments and the allocation of significant resources to address illegally opened facilities.

Third, it is clear from the research of other Ohio communities that Toledo has some of the highest regulatory requirements for these facilities. For example, Toledo is the only community that requires a special review for non-residential facilities. Most communities did not have any plans to revisit or modify their regulations to address the opioid issue in Ohio. A few communities felt that while these facilities may have issues, they had not reached the point where widespread changes were necessary.

STAFF ANALYSIS (cont'd)

Conclusions (cont'd)

Fourth, there is an opportunity to balance the needs of equitable distribution of facilities in Toledo while assisting providers with opening new locations by modifying the review process. On one end of the spectrum is the City of Toledo which requires a special review for all facilities with spacing. On the other end are communities that allow these facilities by right subject to certain licensing standards like the City of Columbus. There is a dramatic gap between these two approaches and communities operating somewhere in between. One possible adjustment to help incentivize facilities in other locations is to remove the SUP review in commercial districts, but maintain and expand the spacing requirement to 1,000 for similar facilities. If a spacing issue is present, the location could still be considered but would be require a SUP. The streamlined regulatory process in areas without a concentration of facilities would offer an incentive to providers. Non-residential facilities could also be expanded to Commercial Office zoning.

Fifth, there is unlikely to be a perfect location for these facilities. Previous SUP cases have demonstrated that residential and commercial neighbors are both likely to be concerned about a drug treatment facility. Yet few would question the need for these facilities in the community. The lack of proposed language changes and lower regulatory requirements in other Ohio communities suggests that at least part of locating these facilities is an issue of perception. If there is truly no perfect location for these facilities, scaling back the regulatory burden in areas where few are concentrated would help Toledo equitably distribute these facilities. The SUP process would remain an option in highly concentrated areas and the MHRSB of Lucas County could be engaged as part of the review process. They are closely involved in the mental health community and could offer an additional perspective for new facilities in highly concentrated areas.

Sixth, longer term residential stays in recovery houses were consistently identified as an area of need. Communities have adopted various approaches to these uses from a special review similar to Toledo, to allowing them based on the number of individuals. Some consider these types of living arrangements as group rentals or residential facilities and allow them subject to licensing and spacing. As highlighted earlier, there are a number of challenges and complexities involved with these uses, although staff adjusted the classification of these facilities after meeting with service agencies and the law department to a housing only use provided that no licensed medical treatment occurs at the facility.

STAFF ANALYSIS (cont'd)

Conclusions (cont'd)

Staff recommends the changes as outlined in items four and five of this conclusion with spacing increased to 1,000 feet for similar facilities. The scaled back regulations for facilities in commercial districts while reserving the SUP process for areas where facilities are concentrated along with an expanded spacing requirement would assist in the distribution of these facilities to more neighborhoods. The review and input from the MHRSB of Lucas County for facilities needing a SUP in a concentrated area would provide an additional layer of scrutiny for the City to consider. Tougher review of SUPs for facilities in concentrated areas would help ensure a broader distribution through Toledo. A closer review of all facilities in Toledo to determine those that are operating without proper approvals with cooperation from other departments and political support for those deemed operating illegally would further reduce facilities in concentrated areas. The full amended language is included as Exhibit "F" of this report along with a map showing the potential policy impacts on available land for new facilities included as Exhibit "G".

PLAN COMMISSION RECOMMENDATION

The Toledo City Plan Commission recommends approval of M-10-18, a Study of Residential Drug and Alcohol Treatment Centers, as proposed in Exhibit "F", to Toledo City Council for the following two (2) reasons:

1. The proposed Text Amendment meets the challenges of a changing condition with the increased prevalence of drug treatment facilities - **TMC 1111.0506(A)**; and

2. The proposed Text Amendment is consistent with the stated purpose of the Zoning Code and protects the health, safety, and general welfare of the citizens of Toledo through a more equitable distribution of a needed use within the community **– TMC 1111.0506(B).**

Respectfully Submitted,

Thomas C. Gibbons
Secretary

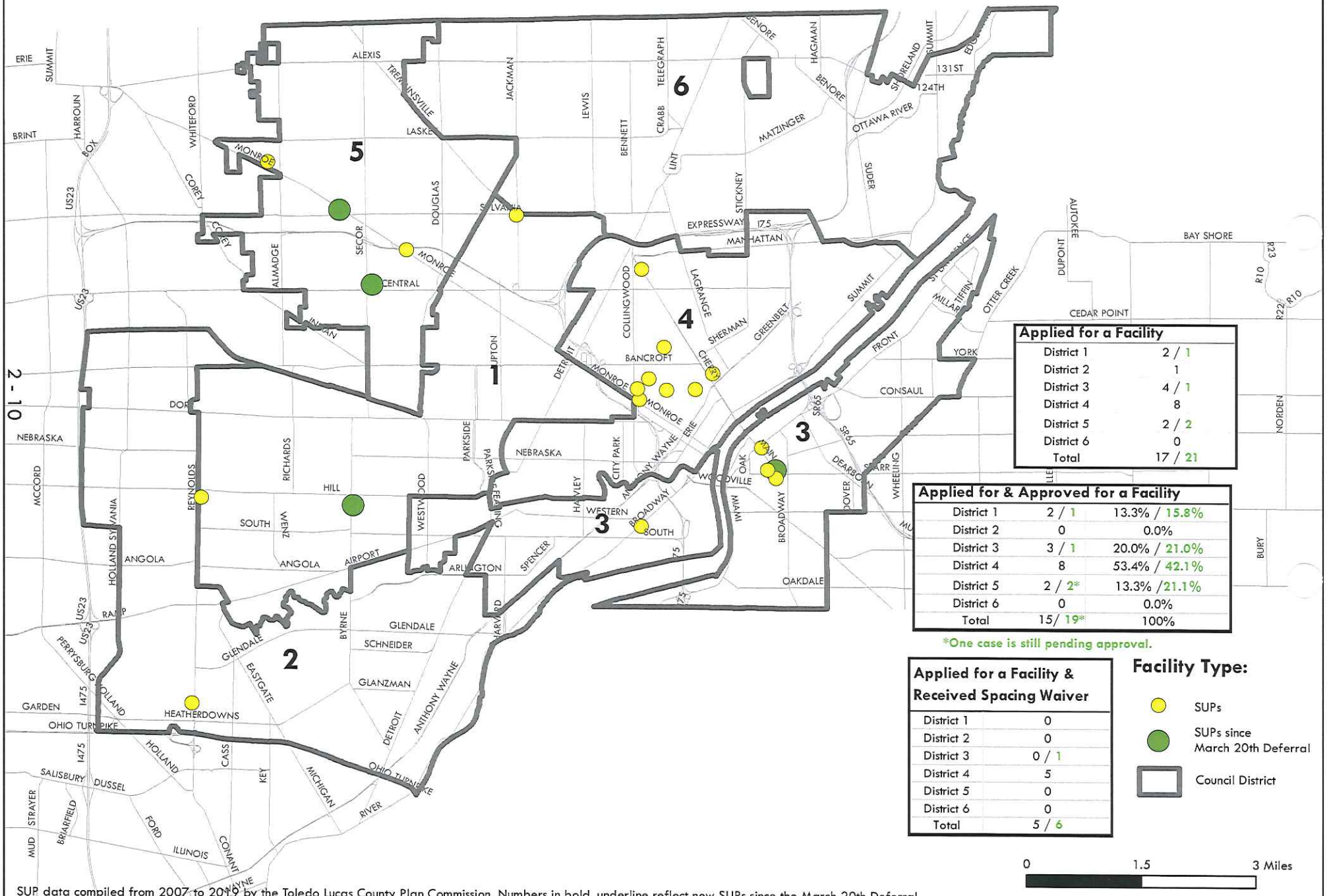
JL
Exhibits "A", "B", "C", "D", "E", "F", "G" follow

Cc: Lisa Cottrell, Administrator
Josh Lewandowski, Principal Planner

Drug and Alcohol Facilities

Special Use Permit (SUP) Applications by Toledo Council Districts

EXHIBIT "A"



Applied for a Facility	
District 1	2 / 1
District 2	1
District 3	4 / 1
District 4	8
District 5	2 / 2
District 6	0
Total	17 / 21

Applied for & Approved for a Facility		
District 1	2 / 1	13.3% / 15.8%
District 2	0	0.0%
District 3	3 / 1	20.0% / 21.0%
District 4	8	53.4% / 42.1%
District 5	2 / 2*	13.3% /21.1%
District 6	0	0.0%
Total	15/ 19*	100%

*One case is still pending approval.

Applied for a Facility & Received Spacing Waiver	
District 1	0
District 2	0
District 3	0 / 1
District 4	5
District 5	0
District 6	0
Total	5 / 6

Facility Type:

- SUPs
- SUPs since March 20th Deferral
- Council District

0 1.5 3 Miles

SUP data compiled from 2007 to 2019 by the Toledo Lucas County Plan Commission. Numbers in bold, underline reflect new SUPs since the March 20th Deferral

EXHIBIT "B"
FACILITIES WITH SUPs

M-10-18

Special Use Permits for Drug and Alcohol Treatment Facilities - 2007 to Present

Exhibit "B"

	Case	Address	Operator	Type	Staff	Plan Comm.		Zoning & Planning		City Council		Waiver	District
					Rec.	Date	Rec.	Date	Rec.	Action	Date		#
1	SUP-10005-07	1902-1926 12th , 512 State	Compass Recovery Services	Non-Residential	Aw/C	12-06-2007	AAw/C	01-09-2008	Aw/C	65-08	01-29-2008	No	4
2	SUP-11004-08	459 Sixth St.	Open Door Ministry	Residential	D	01-08-2009	D	02-11-2009	Aw/C	113-09	03-03-2009	No	3
3	SUP-10004-11	1212 Cherry St	Unison Behavioral Health	Residential & Non-Residential	Aw/C	12-01-2011	Aw/C	01-04-2012	Aw/C	34-12	01-17-2012	No	4
4	SUP-3007-13	3314 Cherry St	Harbor House	Residential	Aw/C	05-09-2013	Aw/C	06-12-2013	Aw/C	322-13	06-25-2013	Yes	4
5	SUP-1004-14	2005-2059 Ashland & 306 Woodruff	Zepf Center	Residential & Non-Residential	Aw/C	03-13-2014	Aw/C	04-16-2014	Aw/C	188-14	04-22-2014	Yes	4
6	SUP-12001-14	5164 Monroe St	A Renewed Mind	Residential	Aw/C	02-12-2015	Aw/C	03-18-2015	Aw/C	152-15	03-31-2015	No	5
7	SUP-7004-15	123 22nd St	LifeStream LLC	Residential	D	09-10-2015	A	10-14-2015	Aw/C	532-15	10-27-2015	Yes	4
8	SUP-12003-15	2321 Warren St	NAOMI	Residential	D	02-11-2016	A	03-23-2016	Aw/C	103-16	03-29-2016	Yes	4
9	SUP-9004-16	1s, 2002-2008 Adams, 1925-1927 Warren, and 1	A Renewed Mind	Non-Residential	D	11-03-2016	D	12-07-2016	Aw/C	7-17	01-10-2017	Yes	4
10	SUP-9007-16	113-117 Main, 112 Platt, 0 1st and 615 1st	Neighborhood Health Assodates	Non-Residential	Aw/C	11-03-2016	Aw/C	12-07-2016	Aw/C	520-16	12-20-2016	No	3
11	SUP-3001-17	115 S. Reynolds Rd	Pinnacle Treatment Centers	Non-Residential	Aw/C	06-08-2017	Aw/C	06-14-2017	Aw/C	265-17	06-27-2017	No	1
12	*SUP-4003-17	1307 Broadway	AMAL Center of Hope	Non-Residential	D	08-10-2017	W/D	---	---	---	---	No	3
13	*SUP-6008-17	2310 S. Reynolds Road	New Season of Ohio	Non-Residential	Aw/C	08-10-2017	Aw/C	09-20-2017	D	F	10-03-2017	No	2
14	SUP-8005-17	4354 Monroe Street	Comprehensive Counseling	Non-Residential	Aw/C	10-12-2017	Aw/C	11-15-2017	Aw/C	516-17	11-28-2017	No	5
15	SUP-11007-17	2310 Jefferson Ave	Unison Behavioral Health	Residential	D	01-11-2018	Aw/C	03-14-2018	FWNR	121-18	04-10-2018	Yes	4
16	SUP-1001-18	1711 Sylvania Ave	Bryan's Recovery & Welness Center	Residential	Aw/C	03-08-2018	Aw/C	05-16-2018	Aw/C	198-18	05-22-2018	No	1
17	SUP-6006-18	732 Main & 727-735 Euclid	Talbot Clinical Services	Residential	Aw/C	08-09-2018	Aw/C	09-12-2018	Aw/C	397-18	09-25-2018	No	3
**18	SUP-3008-19	624 Main St	Caregiver Grove Behavioral Health	Non-Residential	D	05-09-2019	Aw/C	06-12-2019	Aw/C	314-19	06-26-2019	Yes	3
**19	SUP-4006-19	4747 Monroe St	Midwest Recovery Center	Non-Residential	Aw/C	06-13-2019	Aw/C	07-17-2019	Aw/C	352-19	07-23-2019	No	5
**20	SUP-5003-19	3132 Secor Rd	Empowered For Excellence	Residential	Aw/C	07-11-2019	Aw/C	08-14-2019	Aw/C	398-19	09-17-2019	No	5
**21	SUP-7006-19	111 S Byrne Rd	New Concepts	Non-Residential	Aw/C	09-12-2019	Aw/C	10-16-2019	Aw/C	---	PENDING	---	1

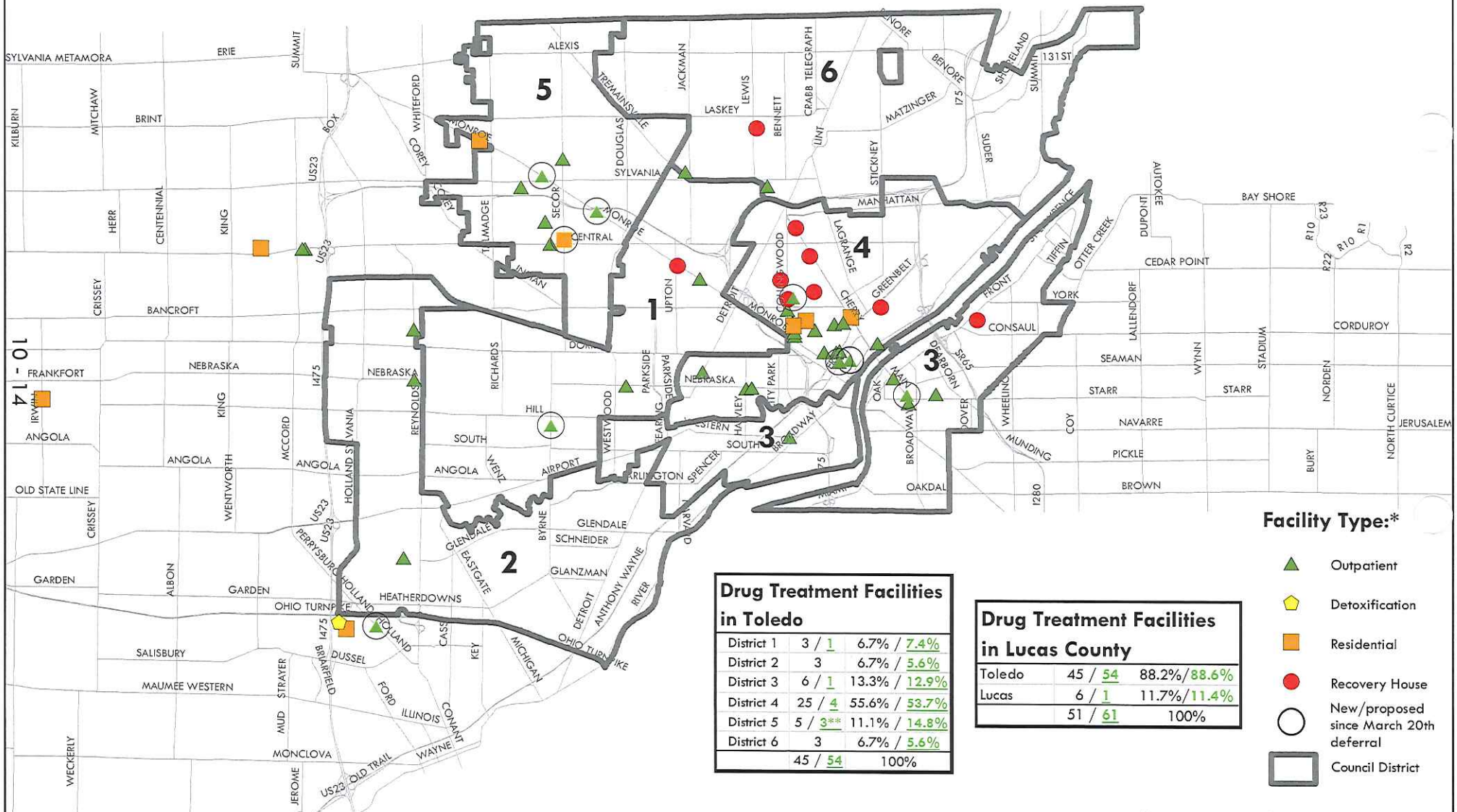
*These permits were not approved.

**Cases since March 20th deferral.

Drug and Alcohol Facilities

Facilities in Lucas County with Toledo Council Districts

EXHIBIT "C"



Facility Type:*

- Outpatient
- Detoxification
- Residential
- Recovery House
- New/proposed since March 20th deferral
- Council District

Drug Treatment Facilities in Toledo		
District 1	3 / 1	6.7% / 7.4%
District 2	3	6.7% / 5.6%
District 3	6 / 1	13.3% / 12.9%
District 4	25 / 4	55.6% / 53.7%
District 5	5 / 3**	11.1% / 14.8%
District 6	3	6.7% / 5.6%
	45 / 54	100%

Drug Treatment Facilities in Lucas County		
Toledo	45 / 54	88.2%/88.6%
Lucas	6 / 1	11.7%/11.4%
	51 / 61	100%

0 2 4 Miles

*Facilities may offer multiple services and are first classified based on the following intensity of use: recovery house, residential, detoxification, and outpatient.

**One case is still pending approval.

Facility data compiled, verified & provided by MHRSB of Lucas County with modifications by Plan Commission. Reflects information obtained from OhioMHAS as of May 1, 2018.

EXHIBIT "D"
CLAIMS DATA

M-10-18

Lucas County Mental Health & Recovery Services Board
Alcohol & Other Drug & Mental Health Treatment Consumers by City Council District
7/1/2016 - 6/30/2017

Individuals	District 1	District 2	District 3	District 4	District 5	District 6	Outside of Toledo	Total
Black	2,120	883	1,078	3,005	416	923	1,880	**10,305**
Hispanic	124	135	393	214	70	143	344	**1,423**
White	1,404	1,750	3,373	1,840	1,500	2,187	5,316	**17,370**
Other or Unknown	267	225	435	414	195	275	862	**2,673**
Total	**3,915**	**2,993**	**5,279**	**5,473**	**2,181**	**3,528**	**8,402**	**31,771**

Tuesday, January 8, 2019

MACSIS & MITS Claims Extract

Steve Spinelli

Comparative Analysis of Drug Treatment Regulations

REQUIREMENTS FOR:	Akron	Cincinnati	Cleveland	Columbus	Dayton	Toledo	Youngstown
RESIDENTIAL							
Group Rental							
Maximum Size	5	4	3	5	3	3	2
Major Street / Spacing	-	-	-	-	-	Y	-
Recovery Housing	Y	-	-	Y	-	-	-
Small Facility							
Size	1-5	1-8 [1]	1-5	1-5	1-5	1-6/8 [2]	3-5/6-10 [3]
Licensing	-	-	-	Y	-	-	Y
Spacing	-	-	1,000 FT	-	-	500 FT	2,000 FT
Zoning							
Single Family	CU	P [1]	P	P	P	P	P [4]
Multiple Family	CU	P [1]	P	P	P	SUP	P [4]
Commercial	CU	P [1]	P	-	-	-	P [4]
Industrial	CU	P [1]	P	-	-	-	-
Large Facility							
Size	6+	No Limit	6-16	6+	6-16	9-16	11-16
Licensing	-	-	-	Y	-	-	Y
Spacing	-	-	1,000 FT	-		500 FT [5]	2,000 FT
Zoning							
Single Family	CU	-	-	-	-	-	P [4]
Multiple Family	CU	P	CU	P	CU	SUP	P [4]
Commercial	CU	P	CU	-	-	SUP	P [4]
Industrial	CU	P	CU	-		-	-
Drug Treatment [6]							
Spacing	-	-	-	-	1,000	500 FT [5]	-
Zoning							
Multiple Family	-	-	-	-	-	SUP	-
Commercial	-	P [7]	-	-	P [8]	SUP	-
Industrial	-	P	-	-		-	-
Institutional	-	CU	-	-	P [8]	-	-
NON-RESIDENTIAL							
Outpatient							
Spacing	-	-	-	-	-	500 FT [5]	-
Commercial	P	P	P	P	P	SUP	P
Institutional	-	P	-	P	P	P	-
Inpatient							
Spacing	-	-	-	-	-	500 FT [5]	-
Commercial	-	P	P [9]	P	P	SUP	-
Institutional	P	P	P	P	P	P	P

[1] Developmental disabilities only
[2] A maximum of 6 or 8 if allowed by state law
[3] Max of 5 for small / 10 for medium
[4] Subject to spacing and a licensed approved by the Health Department
[5] 500 Feet and 1 per block
[6] If viewed separately than a residential facility
[7] Permitted by right in office and auto oriented districts
[8] Permitted in Light Industrial and Institutional Campus, and in Downtown subject to spacing.
[9] General Commecial only

Exhibit "F"
(Additions in italic highlight. Deletions in strikethrough.)

1104.0100 Use Table

Use Category	RS 12	RS 9	RS 6	RD 6	RM (all)	R MH	CN	CO	CM	CS	CR	CD	IL	IG	IP	POS	IC
Residential																	
Drug and Alcohol Treatment Center, Nonresidential	–	–	–	–	S [8]	–	–	–	–	–	~~S~~ P [8]	–	–	–	–	–	–
Commercial Use Types																	
Medical Services																	
Drug and Alcohol Treatment Center, Nonresidential	–	–	–	–	–	–	–	P [8]	~~S~~ P [8]	~~S~~ P [8]	~~S~~ P [8]	–	–	–	–	–	P

1104.1000 | Group Living and Day Care – Spacing

1104.1001 Group Living facilities, Type A Family Day Care Home and Nonresidential Drug and Alcohol Centers that are subject to this spacing requirement Section in the Use Table of Sec. 1104.0100, must be at least 500 feet from a site with any other Group Living facility, Type A Family Day Care Home, and Nonresidential Drug and Alcohol Center that is also subject to this spacing requirement.

1104.1002 In no case may more than one facility subject to this Section be located on the same block.

1104.1003 Halfway houses must be at least 2,000 feet away from other halfway houses. (Ord. 552-11. Passed 11-29-11.)

1104.1004 *Drug and Alcohol Residential Facilities and Drug and Alcohol Treatment Centers, Nonresidential must be at least 1,000 feet away from other Drug and Alcohol Treatment Centers.*

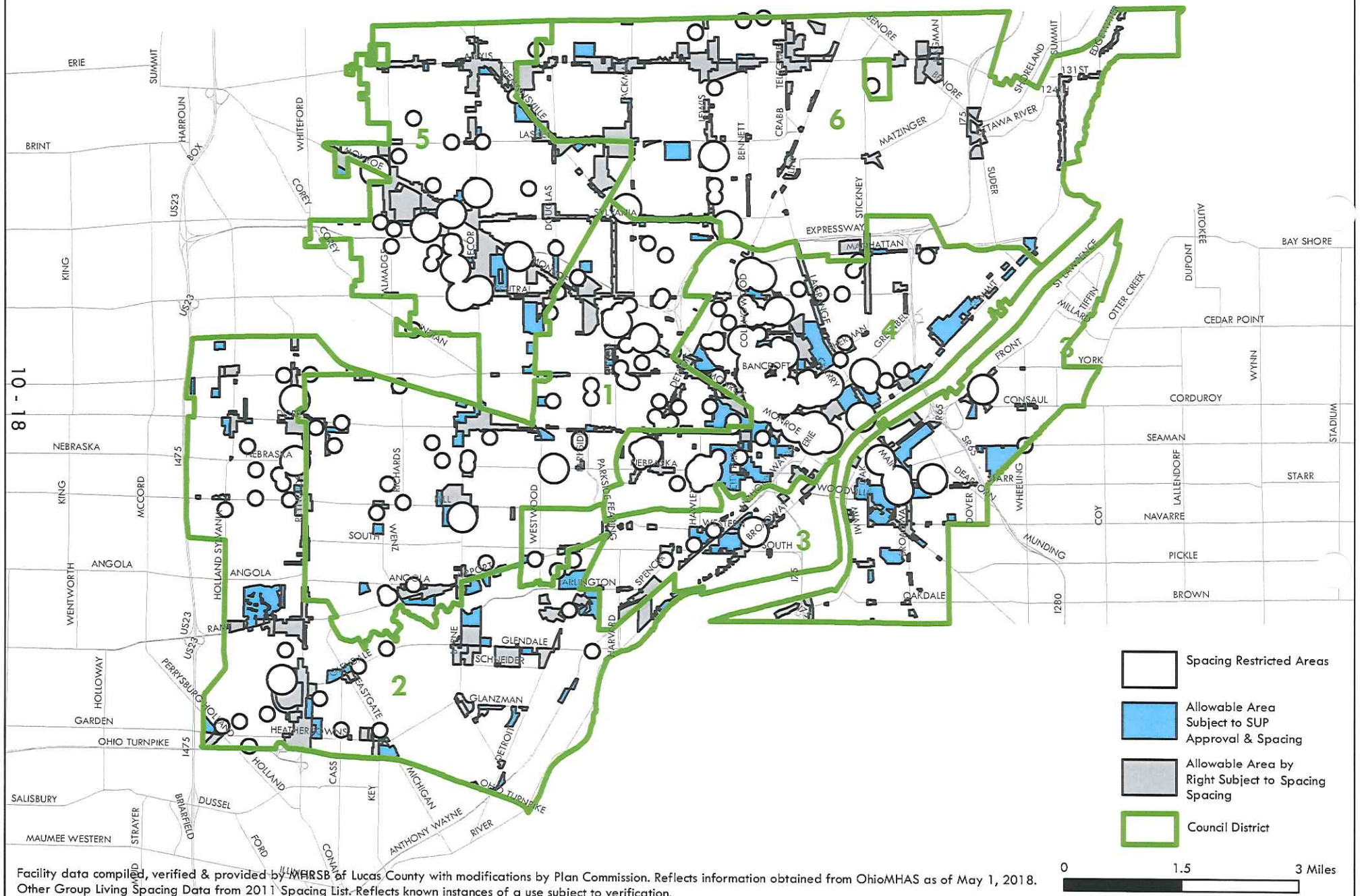
A. *Facilities permitted by right shall request a letter from the Plan Commission indicating the location is properly zoned and not in violation of spacing requirements. If a spacing violation exists, a facility may request approval through the Special Use Permit process.*

B. *Facilities requiring a Special Use Permit shall be forwarded to the Mental Health and Recovery Service Board of Lucas County for an opportunity to provide input as part of the review process.*

Drug and Alcohol Facilities

Allowable Areas for New Facilities Under Proposed Requirements

EXHIBIT "G"



Facility data compiled, verified & provided by MHRSB of Lucas County with modifications by Plan Commission. Reflects information obtained from OhioMHAS as of May 1, 2018. Other Group Living Spacing Data from 2011 Spacing List. Reflects known instances of a use subject to verification.

Advocates for Basic Legal Equality, Inc.

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ABLE is funded in part by:

Mental Health & Recovery Services Board of Lucas County

COMMUNITY SHARES NORTHWEST OHIO

Testimony Before the Toledo Plan Commission
M-10-18
November 7, 2019

Taylor N. Burns
Staff Attorney
Advocates for Basic Legal Equality, Inc.

Good afternoon. My name is Taylor Burns and I am a staff attorney with Advocates for Basic Legal Equality, or ABLE.

I am here today on behalf of our client community, which often includes persons with substance use disorders.

I am here today to reiterate the comments I made at the March 20 Zoning and Planning Committee meeting when the report was previously discussed.

In short, because the proposed changes, both the text amendments and the administrative adjustments, represent a significant improvement to the Code, we support passage. However, as I will explain more fully, we expect a continued commitment from the City to revise the Code with further improvements. Further improvements are necessary to bring the Code into compliance with the Americans with Disabilities Act and the Fair Housing Act. Specifically, explicit barriers to establishing housing or treatment for persons with disabilities should be removed.

In passing the ADA, President Bush declared: "Let the shameful walls of exclusion finally come tumbling down." Congress passed the ADA "to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities." Further, in including individuals with disabilities as a protected class under the FHA, Congress recognized the right to be free of housing discrimination as essential to the goal of independent living.

As a community, we are still working towards the full achievement of this vision. Thus, as a community, we must, not only value, but prioritize access to housing and treatment as tools to overcome the challenges of living with a disability, including substance use disorder. In doing so, we can ensure that our local laws are in compliance with both the ADA and FHA.

First, I will address the regulation of nonresidential treatment centers, and, second, residential treatment centers.

So, first, non-residential drug and alcohol treatment centers are singled out for differential treatment from other "medical services," based on the specific

disability of the population served. That is, individuals seeking medical treatment for substance use disorder are subject to disparate treatment under the law.

While the proposed changes do bring some level of parity, drug and alcohol treatment centers are the only medical services not permitted at all in Neighborhood Commercial or Downtown Commercial zoning districts and are subject to a 1,000-foot spacing requirement.

When a zoning law is discriminatory on its face, as is here, a heavy burden is placed on the City to justify the discriminatory classification. This burden cannot be met with perceived harm based on stereotypes and general, unsupported fears, but must serve a bona fide interest of the City. The City has not met its heavy burden in justifying the discriminatory distinction.

Further, the current definition of non-residential drug and alcohol treatment facilities is so broad and vague that it is unclear how the Plan Commission determines which facilities are classified under that use. Most general practitioners inquire about drug and alcohol usage during the ordinary course of treatment and some provide some services to patients to assist with recovery. It is unclear at what point that facility would be considered a drug and alcohol treatment facility.

Therefore, to bring the Code into compliance with the ADA, the City must eliminate the Use "Non-Residential Drug and Alcohol Treatment Centers" altogether. These centers should be subject to the same regulation as all other medical services.

Second, and similarly, residential treatment centers are singled out and treated differently based on the specific disability of the population served. That is, individuals seeking housing and treatment for substance use disorder are subject to disparate treatment under the law.

Residential drug and alcohol treatment centers are permitted in far fewer zoning districts than other Group Living Uses. And only residential drug and alcohol treatment facilities are subject to the 1,000-foot spacing requirement.

Again, when a zoning law uses discriminatory classifications, this is disparate treatment discrimination under the FHA. The City bears a heavy burden to justify this classification. That is, the City must demonstrate that they Code is "warranted by the unique and specific needs and abilities of those handicapped persons to whom the regulations apply," and the City has not carried this heavy burden here.

To come into compliance with the law, we request that the City eliminate any barriers to establishing housing for persons with disabilities in the Code. To avoid continued discrimination, the City should consider regulating group living facilities based on level of services provided rather than type of disability served. At the very least, the City should eliminate the category of drug and alcohol residential treatment centers.

Finally, we have concerns that the over-regulation of treatment facilities, both residential and non-residential, will actually increase institutionalization in violation of the ADA as interpreted by the Supreme Court in *Olmstead v. L.C.*

Good afternoon, thank you for the opportunity to provide input on the recommendations made in the Study of Residential Drug and Alcohol Treatment Centers, I'm Sarah Jenkins representing The Fair Housing Center.

As stated in the comments made by ABLE and Mr. Sylak, The Fair Housing Center also supports the recommendations to adjust the classification for recovery housing and remove barriers to enable facilities to open in areas of the community where they don't currently exist or are not common. However, Toledo continues to have in place zoning regulations that are more restrictive than other communities, specifically as it pertains to housing for people in recovery from drug and alcohol use.

As you may be aware, HUD and the DOJ released a joint statement on State and Local Land Use Laws and Practices and the Application of the Fair Housing Act in November of 2016. We strongly encourage the City to review this document, as it provides helpful guidance as to how a jurisdiction can ensure its zoning polices comply with The Fair Housing Act. I would like to direct your attention to a few key points from the joint statement:

- The statement specifically identifies practices that would constitute a violation of The Fair Housing Act, including "placing a moratorium on the development of multifamily housing because of concerns that the residents will include members of a protected class" and "imposing restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups."
- Regarding potential resistance from residents, the statement notes that "state and local governments may not act because of the fears, prejudices, stereotypes, or unsubstantiated assumptions that the community members may have about current or prospective residents because of the residents' protected characteristics."
- The Fair Housing Act specifically provides protection for persons in recovery from alcohol and substance abuse, and "treats persons who reside in such homes no differently than persons with disabilities who reside in other types of group homes," making it "illegal under the Act for…zoning laws to exclude or limit group homes for individuals with specific types of disabilities."

- Regarding spacing regulations, the statement indicates that "a neutral spacing requirement that applies to all housing for groups of unrelated persons may have an unjustified discriminatory effect on persons with disabilities, thus violating the Act" and recommends that "any standards that state or local governments adopt should evaluate the location of group homes for persons with disabilities on a case-by-case basis."

In summary, the recommendations being discussed today are a good first step, but we hope that this only opens the door for continuing dialogue about how we can further enhance Toledo's zoning regulations to ensure people with disabilities—and specifically those who are in recovery from drug or alcohol use—have the ability to find housing that meets their needs. We support the City's efforts to evaluate the impact of its zoning regulations on our marginalized populations and consider ways to reduce barriers to equal housing opportunities. We look forward to working together to make Toledo an inclusive and welcoming community where everyone has access to the resources they need to thrive.

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

U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

Washington, D.C.
November 10, 2016

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

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

INTRODUCTION

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

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

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

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

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

This Joint Statement focuses on the Fair Housing Act, not on other federal civil rights laws that prohibit state and local governments from adopting or implementing land use and zoning practices that discriminate based on a protected characteristic, such as Title II of the Americans with Disabilities Act ("ADA"),[3] Section 504 of the Rehabilitation Act of 1973 ("Section 504"),[4] and Title VI of the Civil Rights Act of 1964.[5] In addition, the Joint Statement does not address a state or local government's duty to affirmatively further fair housing, even though state and local governments that receive HUD assistance are subject to this duty. For additional information provided by DOJ and HUD regarding these issues, see the list of resources provided in the answer to Question 27.

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

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

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

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

[3] 42 U.S.C. §12132.

[4] 29 U.S.C. § 794.

[5] 42 U.S.C. § 2000d.

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

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

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

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

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

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

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

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

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

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

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

[8] *Id.* at 2521–22.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Even if a zoning ordinance imposes on group homes the same restrictions that it imposes on housing for other groups of unrelated persons, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities. What constitutes a reasonable accommodation is a case-by-case determination based on an individualized assessment. This topic is discussed in detail in Q&As 20–25 and in the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

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

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

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

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

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

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

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to a certain number of unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission from the city. If that ordinance also prohibits a group home having the same number of persons with disabilities in a certain district or requires it to seek a use permit, the ordinance would violate the Fair Housing Act. The ordinance violates the Act because it treats persons with disabilities less favorably than families and unrelated persons without disabilities.

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

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

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

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

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

[10] 527 U.S. 581 (1999).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27. How can I find more information?

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

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

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

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

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

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

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

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

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

For more information on nuisance and crime-free ordinances:

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

Lewandowski, Joshua

From: Lewandowski, Joshua
Sent: Wednesday, October 30, 2019 11:04 AM
To: Scott Sylak; George Thomas; Taylor Burns; Marie Flannery
Cc: Cottrell, Lisa; Gibbons, Thomas
Subject: Drug & Alcohol Study - Update
Attachments: M-10-18 11-07.pdf

Good Morning,

We wanted to provide an update from our meeting in September on the Drug & Alcohol study. The input you provided was appreciated and it helped guide discussions with our Law Department. After review, we have adjusted the classification of a "Residential Facility" to focus on licensed medical treatment only. Informal treatment would no longer fall under this category. Administrative adjustments do not require code changes and will take effect immediately. This is the only change proposed at this time.

The Drug & Alcohol Study is scheduled for review at the Thursday, November 7th, Toledo Plan Commission hearing starting at 2PM and the Wednesday, December 11th, Toledo City Council Zoning and Planning Committee meeting starting at 4PM. A copy of the revised study is attached to this email.

Regards,

Josh Lewandowski, AICP
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Everyday, individuals are seeking treatment for substance use disorder, but are unable to successfully move through the course of treatment because they are unable to find housing or treatment in the community. The study itself recognizes that the need in this community far exceeds the supply. Without appropriate treatment and housing available in the community, sometimes the only treatment they can find comes in the form of hospitals and other institutions. Not only is this costly, but it violates the central holding of *Olmstead.*

In closing, while the proposed changes represent an improvement, it is necessary to further improve the Code and address the differential treatment of housing and treatment for individuals with substance use disorder.

Thank you for your time.