



TOLEDO - LUCAS COUNTY PLAN COMMISSIONS

One Government Center, Suite 1620, Toledo, OH 43604 P: 419 245-1200 F: 419 936-3730

DATE: May 13, 2022

REF: M-5-21

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

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

SUBJECT: Text Amendment Regarding Group Living

The Toledo City Plan Commission considered the above-referenced request at its meeting on Thursday, April 14, 2022 at 2:00 P.M.

GENERAL INFORMATION

Subject

| | | |
|-----------|---|---------------------------------------|
| Request | - | Text Amendment Regarding Group Living |
| Applicant | - | Toledo-Lucas County Plan Commissions |

Applicable Plans and Regulations

- Toledo Municipal Code, Part Eleven: Planning and Zoning Code

STAFF ANALYSIS

The proposed text amendment is designed to simplify the review and approval process for Group Living facilities and to expand the locations in which they are permitted. This language is the result of approximately one year of cooperative work between Plan Commission staff, the Fair Housing Center, the Mental Health and Recovery Services Board, the Ability Center of Greater Toledo, Advocates for Basic Legal Equity (ABLE), and the City of Toledo Law Department.

Current Code; Need for Amendment

The current regulations for group living are unnecessarily complicated to follow, restrictive to prospective residents and operators, and use language which is need-specific and sometimes ambiguous. The existing language can be seen in "Exhibit A."

STAFF ANALYSIS (Cont'd)

Currently, the code classifies the “Group Living” use category into the following eleven specific subcategories: Adult Family Home, Residential Facility Small, Residential Facility Large, Drug and Alcohol Residential Facility, Halfway House, Nursing Home, Rest Home, Home for the Aging, Group Rental, Homeless Shelter, and Other Group Living. Some of these subcategories, such as Nursing Home, Rest Home, and Home for the Aging are alike and do not require separate categories. Other different subcategories are subject to different approval processes and regulations, and the high number of different categories makes it difficult for applicants and staff to discern which category a potential facility will fall into. The number of subcategories should be reduced to only the amount necessary in order to simplify the review and approval process.

The current requirements are also restrictive to prospective residents and operators. Group living facilities with a small number of people living as a family unit would be classified as a “Residential Facility, Small” are not permitted in some areas that would otherwise permit a single-family dwelling or duplex, such as the Multi-Family Residential (RM) and Neighborhood Commercial (CN) zoning districts. Group living facilities with more occupants living independently are typically classified as a “Residential Facility, Large” and are limited to only Multi-Family Residential (RM) zoning districts and require a Special Use Permit, whereas other apartment buildings are permitted by-right in the Multi-Family Residential (RM) district and every commercial district. Facilities providing residential rehabilitation from drug and/or alcohol dependency are strictly limited to the Regional Commercial (CR) zoning category or the Multi-Family Residential (RM) zoning category with a Special Use Permit. The requirement of a Special Use Permit for some uses leads to additional expense on the applicant’s behalf and additional public review by the Toledo City Plan Commission and Toledo City Council.

Lastly, the current code uses language which is need-specific, outdated, and sometimes ambiguous. The existing language classifies facilities, and where they may be located, based on the personal needs of the people living there. A Residential Facility (small and large) is classified as a state-licensed or state regulated home or facility that provides room and board for persons who require such care because of: “mental retardation or a developmental disability; physical disability; age; long-term illness, including HIV; domestic violence; or being a runaway minor.” Group Living language is the only example in our zoning code where personal needs of residents are codified and extensively regulated; this language is outdated, unnecessary, and restrictive to the people it governs. Other language in the zoning code is based on number of occupants, density, and other geographic and objective variables; language for group living should follow suit.

Staff understands that although there is a need for group living facilities within the City, there are also concerns regarding the location of group living facilities within neighborhoods. Safeguards have been put in place to regulate the saturation and specific location allowances for group living facilities in the proposed language.

STAFF ANALYSIS (Cont'd)
Proposed Text Amendment

The proposed text amendment reduces the eleven above-mentioned subcategories to six, simplifies the review and approval process by permitting more facilities by-right, and updates the language to be more inclusive and objective. The proposed language can be found in “Exhibit B.”

The updated language classifies Group Living into six subcategories: Group Home, Small; Group Home, Large; Halfway House; Nursing Home; Group Rental; and Homeless Shelter. Primary changes include the consolidation of four previous categories (Adult Family Home; Drug and Alcohol Residential Facility; Residential Facility, Small; and Residential Facility, Large) into two updated categories (Group Home, Small and Group Home, Large). “Nursing Home, Rest Home, and Home for the Aging” were also consolidated into one category, “Nursing Home.” This removes unnecessary differentiation to simplify the review and approval process.

The proposed text amendment also allows group living facilities to be located in areas where similarly-sized residential uses would also be permitted. Small group homes with up to 5 persons are permitted by-right in every district that would allow a single-family house. Small group homes are also permitted in some commercial districts to provide additional locations for facilities, allowing adaptive reuse of commercial buildings and of residential structures which may fall under commercial zoning classifications. Large group homes with up to 16 persons are permitted by-right in most zoning districts that permit apartments, including the Multi-Family Residential district and several commercial districts. Understanding neighborhood concerns regarding oversaturation of facilities the proposed language still requires that Group Homes follow the current spacing standards, requiring that they be at least 500 feet from one another and not on the same block. A Special Use Permit may be pursued as an option if the use is permitted in the subject zoning classification, but the site does not meet the spacing or major street requirements. Facilities licensed under the Ohio Department of Mental Health and Addiction Services under ORC. 5119, including residential drug and alcohol rehabilitation facilities, are also required to be located on a major street as defined on the Toledo-Lucas County Major Street and Highway Plan.

The proposed code removes requirements which are based on the personal needs of our residents and creates new standards based solely on objective variables such as number of occupants and state licensure. The code allows facilities by-right in a greater variety of locations, simplifying the approval process.

Group Living Requirements in Comparable Cities

In drafting the proposed legislation, staff also reviewed best practices from other major cities in Ohio. Cincinnati allows up to 4 persons in a single-family residential district in a facility licensed under the Ohio Department of Developmental Disabilities. Drug and Alcohol Facilities are not permitted in residential zoning districts, and may require a Special Permit in commercial districts. The City of Dayton allows up to 8 persons in single-family and mixed-use districts, and up to 16 persons in multi-family districts. The City of Columbus allows shared living facilities, also classified as residential care facilities, in multi-family residential districts. The proposed language is at least as permissive to group living facilities as other major Ohio cities.

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STAFF ANALYSIS (Cont'd)
Conclusion and Recommendation

The proposed text amendment represents a comprehensive update to the zoning code's requirements for group living facilities. The new language is simpler to follow and grants group living facilities similar rights as traditional housing units of the same intensity. Staff recommends approval.

PLAN COMMISSION RECOMMENDATION

The Toledo City Plan Commission recommends approval of M-5-21, a Text Amendment regarding Group Living, to the Toledo City Council for the following one reason.

1. The proposed text amendment corrects an inconsistency in the Zoning Code where the zoning code provides inconsistent requirements for residential uses. (TMC§1111.0506)

Respectfully Submitted,



Thomas C. Gibbons
Secretary

Two (2) exhibits follow

Cc: Lisa Cottrell, Administrator
Matt Lascheid, Associate Planner

Exhibit “A”
Existing Code Language

Chapter 1104 | Use Regulations

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 | | | | | | | | | | | | | | | | | |
| Group Living | | | | | | | | | | | | | | | | | |
| Adult Family Home | P [8] | P [8] | P [8] | P [8] | S [8] | S [8] | S | - | S | - | - | - | - | - | - | - | - |
| Residential Facility, Small | P [8] | P [8] | P [8] | P [8] | S [8] | P [8] | - | - | - | - | - | - | - | - | - | - | - |
| Residential Facility, Large | - | - | - | - | S [8] | - | - | - | - | - | - | - | - | - | - | - | - |
| Drug and Alcohol Residential Facility | - | - | - | - | S [8] | - | - | - | - | - | P [8] | - | - | - | - | - | - |
| Halfway House | - | - | - | - | - | - | - | - | S [8, 27] | - | S [8, 27] | S [8, 27] | - | - | - | - | - |
| Nursing Home | - | S [9] | S [9] | S [9] | S [9] | - | P [9] | - | P [9] | P [9] | P [9] | P [9] | - | - | - | - | - |
| Rest Home | - | S [9] | S [9] | S [9] | S [9] | - | P [9] | - | P [9] | P [9] | P [9] | P [9] | - | - | - | - | - |
| Home for the Aging | - | S [9] | S [9] | S [9] | S [9] | - | P [9] | - | P [9] | P [9] | P [9] | P [9] | - | - | - | - | - |
| Group Rental | P [9,10] | P [9,10] | P [9,10] | P [9,10] | P [9,10] | - | P [10] | P [10] | P [10] | P [10] | P [10] | P [10] | - | - | - | - | - |
| Homeless Shelter | - | - | - | - | - | - | - | - | S [8] | S [8] | S [8] | S [8] | - | - | - | - | - |
| Other Group Living | - | - | - | - | S | - | - | - | - | - | S | S | - | - | - | - | P |
| Commercial Use Types | | | | | | | | | | | | | | | | | |
| Medical Services | | | | | | | | | | | | | | | | | |
| Drug and Alcohol Treatment Center, Nonresidential | - | - | - | - | - | - | - | P [8] | P [8] | P [8] | P [8] | - | - | - | - | - | P |
| All other Medical Services | - | - | - | - | - | - | P [13] | P | P | P | P | P | - | - | - | - | P |

[8] Subject to spacing standards of Sec.0 1104.1000 | Group Living and Day Care – Spacing

[9] Uses must have frontage on one or more major streets.

[10] Subject to standards of Sec. 1104.1100 | Group Rental

[13] Subject to standards of Sec. 1106.0500 | Neighborhood Commercial District Maximum Floor Area

[27] Subject to standards of Sec. 1104.2000 | Halfway Houses

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.

(Ord. 38-21. Passed 01-27-21.)

Chapter 1116 | Terminology

1116.0200 | Use Categories

1116.0221 Group Living

Residential occupancy of a structure by other than a Household, where units or quarters do not each have its own kitchen facilities. Does not include Transient Habitation uses.

A. Adult Family Home

A state-licensed home or facility that provides accommodations to three to five unrelated adults and supervision and personal care services to at least three of those adults. Revised Code Sec. 3722.01(A)(7).

B. Residential Facility, Small

A state-licensed or state-regulated home or facility that provides room and board, personal care, habilitation services, and supervision in a family setting for as many as 6 (or, if allowed by state law, 8) persons who require such care because of any of the following: mental retardation or a developmental disability; physical disability; age; long-term illness, including HIV; domestic violence; or being a runaway minor. Includes the following types of facilities identified under state law: residential facility, Revised Code Sec. 5123.19(L); community alternative home, Revised Code Sec. 3724.01(B); shelter for victims of domestic violence, Revised Code Sec. 3113.33(C); shelter for runaways, Revised Code Sec. 5119.64(B); and other similar uses of the same size licensed by the state but not requiring skilled nursing care.

C. Residential Facility, Large

A state-licensed or state-regulated home or facility that provides room and board, personal care, habilitation services, and supervision in a family setting for more than 9 but not more than 16 persons who require such care because of any of the following: mental retardation or a developmental disability; physical disability; age; long-term illness, including HIV; domestic violence; or being a runaway minor. Includes the following types of facilities identified under state law: residential facility, Revised Code Sec. 5123.19(L); shelter for victims of domestic violence, Revised Code Sec. 3113.33(C); shelter for runaways, Revised Code Sec. 5119.64(B); and other similar uses of the same size licensed by the state but not requiring skilled nursing care.

D. Drug and Alcohol Residential Facility

A home or facility that provides habilitation services for persons with drug and alcohol addictions but not including methadone treatment. See also Sec. 1101.0101A

E. Halfway House

A facility, typically state-licensed, for the care and treatment of adult offenders. Revised Code Sec. 2967.14(C).

F. Nursing Home

A state-licensed home used for the reception and care of individuals who by reason of illness or physical or mental impairment require skilled nursing care and of individuals who require personal care services. Revised Code Sec. 3721.01(A)(6). Also includes Residential Care Facility, Revised Code Sec. 3721.01(A)(7).

G. Rest Home

A home or facility that provides personal care services but not skilled nursing services to adults who reside at the facility. Includes Residential Care Facility Revised Code Sec. 3721.01(A)(7). A facility that conforms with the definition for Adult Foster Home, Adult

Family Home, Residential Facility (Small) or Residential Facility (Large) shall be treated as such, regardless of the fact that it may also meet this definition.

H. Home for the Aging

A state-licensed home that provides services as a Residential Care Facility and a Nursing Home, except that the home provides its services only to individuals who are dependent on the services of others by reason of both age and physical or mental impairment.” Revised Code Sec. 3721.01(A)(8). A facility that conforms with the definition for Residential Facility (Small) or Residential Facility (Large) shall be treated as such a Residential Facility, regardless of the fact that it may also meet this definition.

I. Group Rental

Unrelated persons who do not constitute a family or a functional family as defined in this Zoning Code, living as a single housekeeping unit in which individual sleeping quarters may be occupied by the residents of the dwelling thereof, and in which the relationship among the members of the group rests primarily upon a cost-sharing arrangement.

J. Homeless Shelter

A home or facility that provides temporary housing, with or without meals, to indigent, homeless, or transient persons. Such home or facility shall not provide lodging on a regular basis.

K. Other Group Living

Includes fraternity and sorority houses and other community-based housing not provided for elsewhere in this code.

(Ord. 552-11. Passed 11-29-11.)

1116.0231 Medical Service

Personal health services including prevention, diagnosis and treatment, rehabilitation services provided by physicians, dentists, nurses, and other health personnel and medical testing and analysis services. Typical uses include medical offices, dental laboratories, and health maintenance organizations.

A. Drug and Alcohol Treatment Center, Non-residential

A facility providing alcohol and drug addiction services, including but not limited to methadone treatment, to one or more persons who do not reside at the center.

B. Exceptions

Use types more specifically classified, such as Hospitals.

Exhibit "B"
Proposed Code Language

Chapter 1104 | Use Regulations

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 | | | | | | | | | | | | | | | | | |
| Group Living | | | | | | | | | | | | | | | | | |
| Group Home, Small | P [8] | P [8] | P [8] | P [8] | P [8] | - | P [6,8] | - | P [8] | - | P [6,8] | - | - | - | - | - | - |
| Group Home, Large | - | - | - | - | P [8] | - | P [6,8] | - | P [8] | - | P [6,8] | P [6,8] | - | - | - | - | - |
| Halfway House | - | - | - | - | - | - | - | - | S [8, 27] | - | S [8, 27] | S [8, 27] | - | - | - | - | - |
| Nursing Home | - | S [9] | S [9] | S [9] | S [9] | - | P [9] | - | P [9] | P [9] | P [9] | P [9] | - | - | - | - | - |
| Group Rental | P [9,10] | P [9,10] | P [9,10] | P [9,10] | P [9,10] | - | P [10] | - | P [10] | P [10] | P [10] | P [10] | - | - | - | - | - |
| Homeless Shelter | - | - | - | - | - | - | - | - | S [8] | S [8] | S [8] | S [8] | - | - | - | - | - |
| Commercial Use Types | | | | | | | | | | | | | | | | | |
| Medical Services | - | - | - | - | - | - | P [13] | P | P | P | P | P | - | - | - | - | P |

[6] All dwelling units must be located above the ground floor of the building.

[8] Subject to spacing standards of Sec.0 1104.1000 | Group Living and Day Care – Spacing

[9] Uses must have frontage on one or more major streets.

[10] Subject to standards of Sec. 1104.1100 | Group Rental

[13] Subject to standards of Sec. 1106.0500 | Neighborhood Commercial District Maximum Floor Area

[27] Subject to standards of Sec. 1104.2000 | Halfway Houses

1104.1000 | Group Living and Day Care – Spacing

1104.1001 Group living facilities and Type A Family Day Care Home 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 and Type A Family Day Care Home, 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.

1104.1004 Group Living facilities permitted by right shall request a Certificate of Zoning Compliance from the Division of Building Inspections indicating the location is properly zoned and not in violation of spacing requirements. If a spacing violation exists, or if the proposed facility is not located on a major street as required, a facility may request approval through the Special Use Permit process.

Chapter 1116 | Terminology

1116.0200 | Use Categories

1116.0221 Group Living

Residential occupancy of a structure by other than a Household, where units or quarters do not each have its own kitchen facilities. Does not include Transient Habitation uses.

A. Group Home, Large

A state-licensed or state-regulated residential facility providing accommodations for at least six but not more than sixteen persons. A residential facility licensed under the Ohio Department of Mental Health and Addiction Services under ORC. 5119 must be located on a major street as defined on the Toledo-Lucas County Major Street and Highway Plan.

B. Group Home, Small

A state licensed or state-regulated residential facility providing accommodations for one to five persons. Group Home, Small may accommodate up to eight persons only if the facility is licensed as an Intermediate Care Facility through the Ohio Department of Developmental Disabilities under ORC. 5123. A residential facility licensed under the Ohio Department of Mental Health and Addiction Services under ORC. 5119 must be located on a major street as defined on the Toledo-Lucas County Major Street and Highway Plan.

C. Group Rental

Unrelated persons who do not constitute a family or a functional family as defined in this Zoning Code, living as a single housekeeping unit in which individual sleeping quarters may be occupied by the residents of the dwelling thereof, and in which the relationship among the members of the group rests primarily upon a cost-sharing arrangement. This includes shared housing, fraternities, sororities, and other group living facilities which are not state licensed or state regulated.

D. Halfway House

A facility, typically state-licensed, for the care and treatment of adults returning from incarceration, on parole, or with a criminal history. Revised Code Sec. 2967.14(C)

E. Homeless Shelter

A home or facility that provides temporary housing, with or without meals, to indigent, homeless, or transient persons. Such home or facility shall not provide long-term lodging on a regular basis.

F. Nursing Home

A state-licensed home used for the reception and care of individuals who by reason of illness or physical or mental impairment require skilled nursing care and of individuals who require personal care services. Revised Code Sec. 3721.01(A)(6). Also includes Residential Care Facility, Revised Code Sec. 3721.01(A)(7)

1116.0231 Medical Service

Personal health services including prevention, diagnosis and treatment, rehabilitation services provided by physicians, dentists, nurses, and other health personnel and medical testing and analysis services. Typical uses include medical offices, dental laboratories, and health maintenance organizations.

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A. Exceptions

Use types more specifically classified, such as Hospitals.



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Sent via email, Portable Document Format, to thomas.gibbons@toledo.oh.gov and matthew.lascheid@toledo.oh.gov.

Ken Fallows, Chair
Thomas C. Gibbons, Director
Matthew Lascheid, City Planner
City of Toledo Plan Commission
One Government Center, Ste. #1620
Toledo, OH 43604

May 6, 2022

Re: Group Living Text Amendment, M-5-21

Dear City of Toledo Plan Commissioners:

We write to comment on the proposed text amendment to Group Living, REF: M-5-21. It is our understanding that this text amendment is currently set to appear before the Commission on May 12, 2022. We have asked the Plan Commission Staff to please provide this letter to you in advance of the hearing and to please include it in the packet for this matter.

Collectively, The Fair Housing Center, The Ability Center of Greater Toledo, the Mental Health and Recovery Services Board of Lucas County, and Advocates for Basic Legal Equality brought this issue to the attention of the Plan Commission and have now conversed with the Plan Commission staff for well over a year about the need for a text amendment regarding group living. Both state and federal law—as well as the issues and concerns outlined in the Plan Commission staff's present and past reports—compel these changes to the code.

We wish to thank the Plan Commission staff, including Mr. Gibbons and Mr. Lascheid, who worked long and hard on this. They have been responsive to our requests for meetings and have listened to our feedback.

In short, we ask that the Commission please move forward with these much-needed changes as soon as possible, while also making a few improvements to ensure conformity with state and federal law.

We ask that the Commission adopt the version of the text amendment we enclose here, which displays the redlined changes we suggest.

Please allow us to explain these proposed improvements as provided in the redlined enclosure.

1. Toledo cannot limit the locations of group homes to major streets. But the text amendment confines certain group homes only to major streets.

Ohio law preemptively mandates that any person may operate a group home licensed by Ohio Department of Mental Health and Addiction Services (ODMHAS) or the Ohio Department of Developmental Disability (DODD) in most residential zones. See R.C. 5119.341 (preemptively mandating that zoning authorities must

permit group homes licensed by ODMHAS); R.C. 5123.19 (providing the same mandate for group homes licensed by DODD). The zones where state law preemptively allows them to operate are determined by the size of the facility. *Id.*

While state law provides a few exceptions to this rule—such as architectural design conformity with the character of the neighborhood—it does not provide discretion to limit the locations of group homes to only major streets. *Id.*

Put simply, state law demands that Toledo allow group homes in most residential zones, and it cannot change this mandate to demand they appear only on major streets. *Id.* The text amendment as currently proposed requires that group homes licensed by ODMHAS appear only on major streets. Therefore, we ask that the major street requirement be removed consistent with the redlined edits we provide.

2. Toledo’s authority to enforce spacing restrictions on group homes is limited. But the text amendment provides for expansive spacing limitations beyond those allowed by state law.

Although licensed group homes must be permitted as of right in certain residential zones, state law allows the local zoning authority to enact rules to “limit the excessive concentration” of certain group homes. R.C. 5123.19(N)(3) and R.C. 5119.341(D). But its authority to enact such rules is limited as follows.

For group homes licensed by DODD, the authority to enact local rules to “limit excessive concentration of these residential facilities” pertains only to large facilities with nine to sixteen residents. R.C. 5123.19(N)(3). Furthermore, this exception is designed to limit the excessive concentration of “*these residential facilities*,” as opposed to just any kind of facility that a local authority believes should not be nearby. *Id.*

For group homes licensed by ODMHAS, the authority to enact local rules to “limit the excessive concentration of licensed residential facilities” applies to both large and small facilities. R.C. 5119.341(D). However, the local rules may only limit the concentration of facilities licensed by ODMHAS, as opposed to any kind of facility that a local authority believes the group homes should be separated from. *Id.*

Although state law clearly limits the capacity of local zoning authorities to control the “excessive concentration” of licensed group homes, the proposed text amendment provides expansive spacing restrictions. The code would measure the distance between group homes and a wide range of other types of facilities including day cares. The spacing restrictions do not aim to deconcentrate certain types of group homes, they prohibit the development of such facilities in a wide range of situations unrelated to any goal of de-concentration.

The redlined edits we provide would conform the spacing restrictions to the state law.

3. The Fair Housing Amendments Act also prohibits Toledo from creating barriers to the development of group homes.

The Fair Housing Amendments Act applies to zoning laws and restrictions, including those imposed on group homes. For a review and guidance on the law, please see U.S. Department of Housing and Urban Development and U.S. Department of Justice, State and Local Land Use Laws and Practices and the Application of the Fair Housing Act, November 10, 2016, available

at <https://www.justice.gov/opa/file/912366/download>. A copy of the guidance (hereafter “HUD-DOJ guidance”) is also enclosed.

As provided in the HUD-DOJ guidance, one of the primary examples of violations of the Fair Housing Act in zoning is:

“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.”

Id at 3. *See also Larkin v. State of Mich. Dep't of Soc. Servs.*, 89 F.3d 285 (6th Cir. 1996) (imposing this same rule in the Sixth Circuit).

Obviously, the zoning code, as currently written, imposes restrictions on the development of group homes, beyond those required for other facilities. The text amendment as the staff has proposed it would improve things. But it would still create barriers to the development of group homes, even in ways that conflict with state law.

4. The definition of Halfway House should be updated to utilize more current and inclusive language.

The current definition of Halfway House refers to housing for “adult offenders,” and while this may be consistent with state law, part of the larger purpose of these amendments is to adopt more inclusive language with respect to housing for underserved populations. As such, referring to a Halfway House as housing for “adults returning from incarceration, on parole, or with a criminal history” is suggested as language that is more current, inclusive, and consistent with reentry advocacy.

Therefore, the Plan Commission should adopt the redlined edits as enclosed.

While we are supportive of moving forward with this proposal, we should also note that, throughout this process, other concerns arose regarding the strict regulations on group rentals. We look forward to working with Plan Commission staff in the future to review this issue as well.

If you have any questions, we would be happy to discuss further. You may reach George Thomas at The Fair Housing Center to schedule a discussion at 419-243-6163, ext. 115, or gthomas@toledofhc.org.

Sincerely,

/s/ George Thomas, The Fair Housing Center

/s/ Sarah Jenkins, The Fair Housing Center

/s/ Katherine Hunt-Thomas, The Ability Center of Greater Toledo

/s/ Scott Sylak, the Mental Health and Recovery Services Board of Lucas County

/s/ David Manor, Advocates for Basic Legal Equality

| 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 | | | | | | | | | | | | | | | | | |
| Household Living | | | | | | | | | | | | | | | | | |
| Detached House | P | P | P | P | P | - | P | - | - | - | - | - | - | - | - | - | - |
| Detached House, Zero Lot Line | - | - | P [1] | P [1] | P [1] | - | P [1] | - | - | - | - | - | - | - | - | - | - |
| Attached House | - | - | - | P [2] | P [2] | - | P [2] | - | P [2] | - | - | P [2] | - | - | - | - | - |
| Duplex | - | - | - | P | P | - | P | - | - | - | - | - | - | - | - | - | - |
| Cluster Housing | S [3] | S [3] | S [3] | S [3] | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Manufactured Housing Park | - | - | - | - | - | P [4] | - | - | - | - | - | - | - | - | - | - | - |
| Manufactured Home | - | - | - | - | - | P | - | - | - | - | - | - | - | - | - | - | - |
| Multi-Dwelling Structure | - | - | - | - | P [5] | - | P [5,6] | P [5,6] | P [5,7] | P [5,6] | P [5,6] | P [5] | - | - | - | - | P |
| Adult Foster Home | P | P | P | P | P | P | P | - | - | - | - | - | - | - | - | - | - |
| Certified Foster Home | P | P | P | P | P | P | P | P | P | P | P | P | - | - | - | - | P |
| Group Living | | | | | | | | | | | | | | | | | |
| Group Home, Small | P [8] | P [8] | P [8] | P [8] | P [8] | - | P [6,8] | - | P [8] | - | P [6,8] | - | - | - | - | - | - |
| Group Home, Large | - | - | - | - | P [8] | - | P [6,8,9] | - | P [8,9] | - | P [6,8] | P [6,8] | - | - | - | - | - |
| Halfway House | - | - | - | - | - | - | - | - | S [8, 27] | - | S [8, 27] | S [8, 27] | - | - | - | - | - |
| Nursing Home | - | S [9] | S [9] | S [9] | S [9] | - | P [9] | - | P [9] | P [9] | P [9] | P [9] | - | - | - | - | - |
| Group Rental | P [9,10] | P [9,10] | P [9,10] | P [9,10] | P [9,10] | - | P [10] | - | P [10] | P [10] | P [10] | P [10] | - | - | - | - | - |
| Homeless Shelter | - | - | - | - | - | - | - | - | S [8] | S [8] | S [8] | S [8] | - | - | - | - | - |

[6] Dwelling units must be located above ground floor

[8] Spacing

[9] Major Street

The rows of the Use Categories table titled “Residential Drug and Alcohol Treatment Center” and “All other Medical Services” is removed entirely. The row of the Use Categories table titled “Medical Services” is amended to read as follows:

| | RS 12 | RS 9 | RS 6 | RD6 | RM | RMH | CN | CO | CM | CS | CR | CD | IL | IG | IP | POS | IC |
|---------------------|----------|---------|---------|-----|----|-----|-----------|----|----|----|----|----|----|----|----|-----|----|
| Medical Services | - | - | - | - | - | - | P [13] | P | P | P | P | P | - | - | - | - | P |

Existing Code Section

SECTION #. Current Toledo Municipal Code Section 1116.0231 which reads as follows is hereby repealed:

Personal health services including prevention, diagnosis and treatment, rehabilitation services provided by physicians, dentists, nurses, and other health personnel and medical testing and analysis services. Typical uses include medical offices, dental laboratories, and health maintenance organizations.

A. **Drug and Alcohol Treatment Center, Non-residential.** A facility providing alcohol and drug addiction services, including but not limited to methadone treatment, to one or more persons who do not reside at the center.

B. **Exceptions.** Use types more specifically classified, such as Hospitals.

Proposed Code Section

SECTION #. Toledo Municipal Code Section 1116.0231 is hereby enacted to read as follows:

1116.0231 Medical Services.

Personal health services including prevention, diagnosis and treatment, rehabilitation services provided by physicians, dentists, nurses, and other health personnel and medical testing and analysis services. Typical uses include medical offices, dental laboratories, and health maintenance organizations.

B. **Exceptions.** Use types more specifically classified, such as Hospitals.

1116.0231 – Remove “Non-residential Drug and Alcohol Treatment Center” description – this distinction makes no sense since there is no “residential” Drug and Alcohol Treatment Center. It also distinguishes facilities based on disability. This would remove the distinction.

proposed facility is not located on a major street as required, a facility may request approval through the Special Use Permit process.



Ohio Revised Code

Section 5119.341 Operations as permitted use.

Effective: September 29, 2015

Legislation: House Bill 64 - 131st General Assembly

(A) Any person may operate a residential facility providing accommodations and personal care services for one to five unrelated persons and licensed as a residential facility that meets the criteria specified in division (B)(1)(b) of section 5119.34 of the Revised Code as a permitted use in any residential district or zone, including any single-family residential district or zone of any political subdivision. Such facilities may be required to comply with area, height, yard, and architectural compatibility requirements that are uniformly imposed upon all single-family residences within the district or zone.

(B) Any person may operate a residential facility providing accommodations and personal care services for six to sixteen persons and licensed as a residential facility that meets the criteria specified in division (B)(1)(b) of section 5119.34 of the Revised Code as a permitted use in any multiple-family residential district or zone of any political subdivision, except that a political subdivision that has enacted a zoning ordinance or resolution establishing planned-unit developments as defined in section 519.021 of the Revised Code may exclude such facilities from such districts, and a political subdivision that has enacted a zoning ordinance or resolution may regulate such facilities in multiple-family residential districts or zones as a conditionally permitted use or special exception, in either case, under reasonable and specific standards and conditions set out in the zoning ordinance or resolution to:

(1) Require the architectural design and site layout of the home and the location, nature, and height of any walls, screens, and fences to be compatible with adjoining land uses and the residential character of the neighborhood;

(2) Require compliance with yard, parking, and sign regulation.

(C) Divisions (A) and (B) of this section do not affect any right of a political subdivision to permit a person to operate a residential facility licensed under section 5119.34 of the Revised Code in a single-family residential district or zone under conditions established by the political subdivision.



Ohio Revised Code

Section 5123.19 Operation of residential facilities.

Effective: September 30, 2021

Legislation: House Bill 110

(A) As used in sections 5123.19 to 5123.20 of the Revised Code:

(1) "Independent living arrangement" means an arrangement in which an individual with a developmental disability resides in an individualized setting chosen by the individual or the individual's guardian, which is not dedicated principally to the provision of residential services for individuals with developmental disabilities, and for which no financial support is received for rendering such service from any governmental agency by a provider of residential services.

(2) "Licensee" means the person or government agency that has applied for a license to operate a residential facility and to which the license was issued under this section.

(3) "Political subdivision" means a municipal corporation, county, or township.

(4) "Related party" has the same meaning as in section 5123.16 of the Revised Code except that "provider" as used in the definition of "related party" means a person or government entity that held or applied for a license to operate a residential facility, rather than a person or government entity certified to provide supported living.

(5)(a) Except as provided in division (A)(5)(b) of this section, "residential facility" means a home or facility, including an ICF/IID, in which an individual with a developmental disability resides.

(b) "Residential facility" does not mean any of the following:

(i) The home of a relative or legal guardian in which an individual with a developmental disability resides;

(ii) A respite care home certified under section 5126.05 of the Revised Code;



(e) The residential facility will contain eight beds;

(f) The licensee will make a good faith effort to serve multi-system youth or adults with severe behavioral challenges at the residential facility or at one or more other residential facilities for which licenses are issued under division (C) of this section.

(3) The director shall issue not more than five licenses under division (C)(2) of this section.

(D) If it is determined that an applicant or licensee is not in compliance with a provision of this chapter that applies to residential facilities or the rules adopted under such a provision, the director may deny issuance of a license, refuse to renew a license, terminate a license, revoke a license, issue an order for the suspension of admissions to a facility, issue an order for the placement of a monitor at a facility, issue an order for the immediate removal of residents, or take any other action the director considers necessary consistent with the director's authority under this chapter regarding residential facilities. In the director's selection and administration of the sanction to be imposed, all of the following apply:

(1) The director may deny, refuse to renew, or revoke a license, if the director determines that the applicant or licensee has demonstrated a pattern of serious noncompliance or that a violation creates a substantial risk to the health and safety of residents of a residential facility.

(2) The director may terminate a license if more than twelve consecutive months have elapsed since the residential facility was last occupied by a resident or a notice required by division (J) of this section is not given.

(3) The director may issue an order for the suspension of admissions to a facility for any violation that may result in sanctions under division (D)(1) of this section and for any other violation specified in rules adopted under division (G)(2) of this section. If the suspension of admissions is imposed for a violation that may result in sanctions under division (D)(1) of this section, the director may impose the suspension before providing an opportunity for an adjudication under Chapter 119. of the Revised Code. The director shall lift an order for the suspension of admissions when the director determines that the violation that formed the basis for the order has been corrected.



prompted the proceedings have been corrected at the time of the hearing.

(E)(1) Except as provided in division (E)(2) of this section, appeals from proceedings initiated to impose a sanction under division (D) of this section shall be conducted in accordance with Chapter 119. of the Revised Code.

(2) Appeals from proceedings initiated to order the suspension of admissions to a facility shall be conducted in accordance with Chapter 119. of the Revised Code, unless the order was issued before providing an opportunity for an adjudication, in which case all of the following apply:

(a) The licensee may request a hearing not later than ten days after receiving the notice specified in section 119.07 of the Revised Code.

(b) If a timely request for a hearing that includes the licensee's current address is made, the hearing shall commence not later than thirty days after the department receives the request.

(c) After commencing, the hearing shall continue uninterrupted, except for Saturdays, Sundays, and legal holidays, unless other interruptions are agreed to by the licensee and the director.

(d) If the hearing is conducted by a hearing examiner, the hearing examiner shall file a report and recommendations not later than ten days after the last of the following:

(i) The close of the hearing;

(ii) If a transcript of the proceedings is ordered, the hearing examiner receives the transcript;

(iii) If post-hearing briefs are timely filed, the hearing examiner receives the briefs.

(e) A copy of the written report and recommendation of the hearing examiner shall be sent, by certified mail, to the licensee and the licensee's attorney, if applicable, not later than five days after the report is filed.

(f) Not later than five days after the hearing examiner files the report and recommendations, the



- (5) Classifications for the various types of residential facilities;
 - (6) The maximum number of individuals who may be served in a particular type of residential facility;
 - (7) Uniform procedures for admission of individuals to and transfers and discharges of individuals from residential facilities;
 - (8) Other standards for the operation of residential facilities and the services provided at residential facilities;
 - (9) Procedures for waiving any provision of any rule adopted under this section.
- (H)(1) Before issuing a license, the director shall conduct a survey of the residential facility for which application is made. The director shall conduct a survey of each licensed residential facility at least once during the period the license is valid and may conduct additional inspections as needed. A survey includes but is not limited to an on-site examination and evaluation of the residential facility, its personnel, and the services provided there. The director may assign to a county board of developmental disabilities or the department of health the responsibility to conduct any survey or inspection under this section.
- (2) In conducting surveys, the director shall be given access to the residential facility; all records, accounts, and any other documents related to the operation of the facility; the licensee; the residents of the facility; and all persons acting on behalf of, under the control of, or in connection with the licensee. The licensee and all persons on behalf of, under the control of, or in connection with the licensee shall cooperate with the director in conducting the survey.
- (3) Following each survey, the director shall provide the licensee with a report listing the date of the survey, any citations issued as a result of the survey, and the statutes or rules that purportedly have been violated and are the bases of the citations. The director shall also do both of the following:
- (a) Specify a date by which the licensee may appeal any of the citations;



determines that a significant change of ownership is proposed, the director shall consider the proposed change to be an application for development by a new operator pursuant to section 5123.042 of the Revised Code and shall advise the applicant within sixty days of the notification that the current license shall continue in effect or a new license will be required pursuant to this section. If the director requires a new license, the director shall permit the facility to continue to operate under the current license until the new license is issued, unless the current license is revoked, refused to be renewed, or terminated in accordance with Chapter 119. of the Revised Code.

(3) A licensee shall transfer to the new licensee or management contractor all records related to the residents of the facility following any significant change in the identity of the licensee or management contractor.

(K) A county board of developmental disabilities and any interested person may file complaints alleging violations of statute or department rule relating to residential facilities with the department. All complaints shall state the facts constituting the basis of the allegation. The department shall not reveal the source of any complaint unless the complainant agrees in writing to waive the right to confidentiality or until so ordered by a court of competent jurisdiction.

The department shall adopt rules in accordance with Chapter 119. of the Revised Code establishing procedures for the receipt, referral, investigation, and disposition of complaints filed with the department under this division.

(L) Before issuing a license under this section to a residential facility that will accommodate at any time more than one individual with a developmental disability, the director shall, by first class mail, notify the following:

(1) If the facility will be located in a municipal corporation, the clerk of the legislative authority of the municipal corporation;

(2) If the facility will be located in unincorporated territory, the clerk of the appropriate board of county commissioners and the fiscal officer of the appropriate board of township trustees.

The director shall not issue the license for ten days after mailing the notice, excluding Saturdays,



(2) Require compliance with yard, parking, and sign regulation;

(3) Limit excessive concentration of these residential facilities.

(O) This section does not prohibit a political subdivision from applying to residential facilities nondiscriminatory regulations requiring compliance with health, fire, and safety regulations and building standards and regulations.

(P) Divisions (M) and (N) of this section are not applicable to municipal corporations that had in effect on June 15, 1977, an ordinance specifically permitting in residential zones licensed residential facilities by means of permitted uses, conditional uses, or special exception, so long as such ordinance remains in effect without any substantive modification.

(Q)(1) The director may issue an interim license to operate a residential facility to an applicant for a license under this section if either of the following is the case:

(a) The director determines that an emergency exists requiring immediate placement of individuals in a residential facility, that insufficient licensed beds are available, and that the residential facility is likely to receive a permanent license under this section within thirty days after issuance of the interim license.

(b) The director determines that the issuance of an interim license is necessary to meet a temporary need for a residential facility.

(2) To be eligible to receive an interim license, an applicant must meet the same criteria that must be met to receive a permanent license under this section, except for any differing procedures and time frames that may apply to issuance of a permanent license.

(3) An interim license shall be valid for thirty days and may be renewed by the director for a period not to exceed one hundred eighty days.

(4) The director shall adopt rules in accordance with Chapter 119. of the Revised Code as the



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

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

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.

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

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.

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

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).

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.

Questions and Answers on the Fair Housing Act and Reasonable Accommodation Requests to Local Zoning and Land Use Laws

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.

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.

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>.