

City of Augusta, Maine
DEPARTMENT OF DEVELOPMENT SERVICES

AUGUSTA STATE AIRPORT
CODE ENFORCEMENT
ECONOMIC DEVELOPMENT



ENGINEERING
FACILITIES & SYSTEMS
PLANNING

Memo

To: Planning Board

From: Matt Nazar, Director of Development Services

Date: August 18, 2016

Re: Group Homes, Boarding Homes, Rooming Houses, etc.

The meeting on August 23, 2016, is anticipated to be an information gathering session. The information below and the information presented by residents and property owners in the area will help the Planning Board form the foundation necessary to make a recommendation.

On August 4, 2016, the City Council voted to put a moratorium in place prohibiting the issuance of any permits for any new or expanded Group and Boarding Homes, or Rooming Houses in the RB2 and BP zoning districts to give the city time to clarify definitions for these uses. The moratorium can last for up to 180 days, but the Council made it clear that they want to resolve this issue as soon as is possible.

On August 3, 2016, the Board of Zoning Appeals overturned a decision by the Code Enforcement Officer related to the Betsy Ann Ross House of Hope. The Code Enforcement Officer classified the use as a Rooming House, based on the description of the use and the definition in the ordinance. The applicant argued to the BZA that the use was a Boarding Home. The ordinance does not have a definition for a Boarding Home and the use was included with another term "Group" in the table of uses. This BZA decision has resulted in significant uncertainty for staff in ordinance interpretation because it pulled apart a use listed in the Table of Uses and used a definition that does not exist in the ordinance. In order to be able to advise applicants, the CEOs need as clear an ordinance as possible.

In addition to these concerns, other uses quickly come into play as well, with very minor changes to how people describe their use and with whom they decide to partner. The Land Use Ordinance does not have a direct definition for a "homeless shelter" or "sober house", and there could be confusion about the definition for a "Religious Activity and Accessory Uses".

The Land Use Ordinance has the following definitions:

GROUP HOMES A residential care facility licensed by the State of Maine, wherein persons not legally related to the operator are provided personal care, supervision and social or rehabilitative services. The facility serves as a substitute for the residents' own homes, furnishing facilities and comforts normally found in a home but providing, in addition, such service, equipment, and safety features as are required for safe and adequate care of the residents. "Group home" includes community living uses, as defined in 30 M.R.S.A. § 4962-A,[2] but does not include foster family homes or nursing homes.

ROOMING HOUSE A building in which three or more rooms are kept, used, maintained, advertised or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests or tenants for weekly or longer periods, with or without board, for compensation (as distinguished from hotels, motels and tourist homes in which rentals are generally on an overnight basis for transients).

RELIGIOUS ACTIVITIES AND ASSOCIATED USES A structure or place where persons regularly assemble for worship, ceremonies, rituals, education, and related social events pertaining to a particular system of beliefs, and which structure or place, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain religious ceremonies and purposes. "Religious activities and associated uses" includes but is not limited to churches, religious temples, convents, monasteries, parsonages, rectories, religious camps and retreat sites.

State law adds some confusion to the situation by requiring municipalities to treat specific types of situations as though they were a single family residence for zoning purposes. Title 30-A, Section 4357-A defines a "Community Living Arrangement" as follows:

§4357-A. Community living arrangements

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Community living arrangement" means a housing facility for 8 or fewer persons with disabilities that is approved, authorized, certified or licensed by the State. A community living arrangement may include a group home, foster home or intermediate care facility.

B. "Disability" has the same meaning as the term "handicap" in the federal Fair Housing Act, 42 United States Code, Section 3602.

2. Single-family use. In order to implement the policy of this State that persons with disabilities are not excluded by municipal zoning ordinances from the benefits of normal residential surroundings, a community living arrangement is deemed a single-family use of property for the purposes of zoning.

The 2007 Comprehensive Plan includes a clear set of policies for the Westside Residential area, which is larger than the Westside Neighborhood, but includes it. I have attached a copy of the relevant section of the Comprehensive Plan.

Finally, there are a couple of Federal laws to keep in mind as the Board moves forward in forming a recommendation. The Federal Fair Housing Act and the Religious Land Use and Institutionalized Persons Act. Information sheets on both of those issues are attached to this memo.

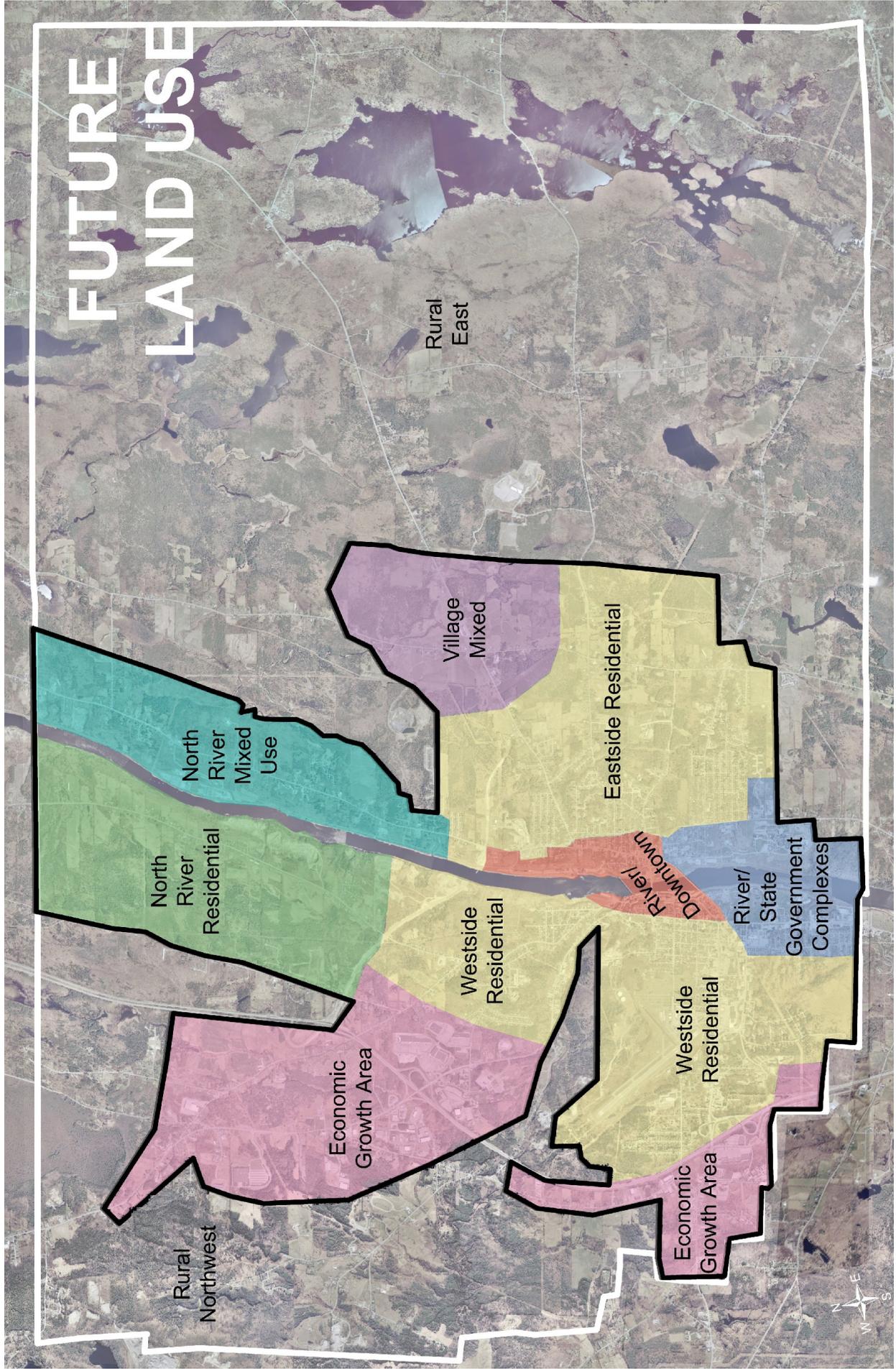
I do have a set of recommendations and thoughts on ways to move forward, but before I put those ideas on the table I want to be sure I clearly understand the concerns of property owners, residents, and the Planning Board on the issues. I may need to adjust those ideas after hearing the direction the Planning Board is interested in going.

At a minimum, I believe the Planning Board will need to consider the following:

1. A new set of definitions for the following uses listed in the Table of Uses:
 - a. Group Home
 - b. Boarding Home
 - c. Rooming House
 - d. Homeless Shelter
 - e. Sober Home
 - f. Religious Activity and Associated Uses

Some of these may be lumped into a single definition, or may not be necessary.

2. Modify the Table of Uses to include any newly created uses in the definitions above and eliminate any uses currently listed in the table that do not have definitions.
3. Look at residential density issues within the neighborhood to determine if they are appropriate.



Future Land Use

Westside Residential

Purpose

The Westside Residential District is a mix of neighborhoods and commercial corridors, with clear lines separating the two. The protection of neighborhoods from further encroachment of businesses is critical to maintaining livability, long term security for residential investment, and historic character. At the same time, commercial corridors such as Western Avenue, Capitol Street, portions of State Street, and Mount Vernon Avenue are important places of commerce. These corridors should be limited in depth generally to one or two lots back from the main corridors.

The area encompasses many of Augusta’s traditional neighborhoods. This plan calls for preserving and protecting these neighborhoods, allowing for residential growth by building on vacant lots and on neighboring open spaces, creating pedestrian connections to trails and parks and the riverfront, and supporting services and small businesses that enhance the residential environment.

Within these neighborhoods there are key artery streets. These perform both commercial and through-traffic functions, and also serve as gateways to the city center. Design and landscape standards will ensure that development along these streets will be done in a way that maintains the attractiveness of the City.

Clusters of residences that form traditional neighborhoods are designated on the Future Land-Use Details map. They receive varying levels of protection dependent on the existing level of current non-residential encroachment. Over time, some of these neighborhoods may need to be re-evaluated regarding their continued existence as residential areas, particularly those very close to existing major non-residential development.

Carefully crafted design criteria, addressing both the building and the site, will ensure that non-residential uses allowed in residential areas will have little or no impact on the neighboring residences or neighborhood environment.

Design Criteria

This is a moderately dense development area and maintaining that density, while enhancing its functionality and appearance, are the goals of the design criteria for this district.

 On-site parking should be sufficient to accommodate on-site uses.

 Parking areas should be landscaped both internally and at the edges to screen and soften the effect of this “hardscape.”

 Landscaping is important in the district, and where possible must be incorporated throughout a site.

 Sidewalks and pedestrian connections are critical. Sidewalks, trails, and bikeways must connect to the City’s network.

 Setbacks should be minimal in the residential subdistricts to maximize the use of the available public utilities and create a pedestrian scale environment. Setbacks and screening should be utilized on the edges of commercial and residential subdistricts, and the Planning Board should also have flexibility to require the placement of landscaping between commercial uses when it makes sense to improve the appearance of the area.

 Lot sizes should require residential densities of 4 to 10 units per acre where public utilities are available, and 2 to 4 residential units per acre where they are not.

Future Land Use

Westside Residential

 Building height should be limited to about 40 feet, except for steeples, clock towers, and similar architectural features that are typically associated with particular uses.

 Lighting should be pedestrian scale first and auto scale second, except along arterial and major collector roads. Lighting should be full cutoff and designed to eliminate as much light pollution and glare as possible. Accent lighting should be directed such that it is non-intrusive.

 Signage should be pedestrian-oriented and not be high on buildings. Sign size and number should be regulated to limit sign clutter. Sign material or design should be considered only to the extent that a sign should not be distracting to drivers by flashing, being overly bright, having or mimicking movement, or being otherwise obtrusive on the landscape.

 Form-based zoning (which focuses on building design and scale, rather than immediate use) should be explored in this area. As a building typically outlasts its initial use, it is important that the building is compatible with the surrounding area and easily adapted to other uses.

Uses

Subdistricts, design criteria, and possibly form-based zoning in this area will play a vital role in helping to control the effects of incompatible uses. The following uses are expected in the district: in primarily residential subdistricts, non-residential uses will be strictly limited and/or controlled by design standards.

 Retail, with very limited opportunity for auto sales and other similar retail uses dependent on outdoor storage and the display of large goods.

 Services  Restaurants

 Offices  Government

 Institutional, such as churches and schools

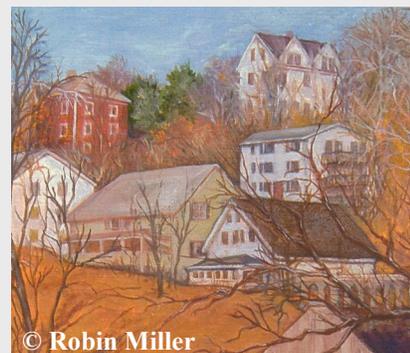
 Recreational, especially park and playground areas

 Single-family, duplex, and multi-family residential

Subdistricts

The Augusta Future Land-Use map depicts generalized districts within which subdistricts are expected to be created. The Westside Residential district is broken into a number of distinct subdistricts that are either primarily non-residential or primarily residential.

The interface of these subdistricts is a place for careful compromise where existing residential uses may be converted to commercial, but only if care is taken that other adjacent residential uses are minimally impacted. For example, existing residences directly on Western Avenue should be allowed to convert to commercial uses, provided that adequate mitigation of the impacts of the new commercial use is ensured for adjacent residential uses. As another example, Winthrop Street has a number of offices on its lower section. These offices should not be allowed to convert to a more intense non-residential use, but may be converted to a residential use if desired. Each case will need careful consideration of specific surrounding conditions.





U.S. Department of Justice Civil Rights Division

A Guide To Federal Religious Land Use Protections

The Religious Land Use and Institutionalized Persons Act (RLUIPA) protects religious institutions from unduly burdensome or discriminatory land use regulations. The law was passed unanimously by Congress in 2000, after hearings in which Congress found that houses of worship, particularly those of minority religions and start-up churches, were disproportionately affected, and in fact often were actively discriminated against, by local land use decisions. Congress also found that, as a whole, religious institutions were treated worse than comparable secular institutions. Congress further found that zoning authorities frequently were placing excessive burdens on the ability of congregations to exercise their faiths in violation of the Constitution.

In response, Congress enacted RLUIPA. This new law provides a number of important protections for the religious freedom of persons, houses of worship, and religious schools. The full text of RLUIPA is available at http://www.usdoj.gov/crt/housing/housing_rluipa.htm. Below is a summary of the law's key provisions, with illustrations of the types of cases that may violate the law.

- **RLUIPA prevents infringement of religious exercise.**

Land use regulations frequently can impede the ability of churches or other religious institutions to carry out their mission of serving the religious needs of their members. Section 2(a) of RLUIPA thus bars zoning restrictions that impose a “substantial burden” on the religious exercise of a person or institution, unless the government can show that it has a “compelling interest” for imposing the restriction and that the restriction is the least restrictive way for the government to further that interest.

Minor costs or inconveniences imposed on religious institutions are insufficient to trigger RLUIPA's protections. The burden must be “substantial.” And, likewise, once the institution has shown a substantial burden on its religious exercise, the government must show not merely that it has a rational reason for imposing the restriction, but must show that the reason is “compelling.”

A church applies for a variance to build a modest addition to its building for Sunday school classes. Despite the church demonstrating that the addition is critical to carrying out its religious mission, that there is adequate space on the lot, and that there would be a negligible impact on traffic and congestion in the area, the city denies the variance.

A Jewish congregation that has been meeting in various rented spaces that have proven inadequate for the religious needs of its growing membership purchases land and seeks to build a synagogue. The town council denies the permit, and the

only reason given is “we have enough houses of worship in this town already, and want more businesses.”

Because the religious organizations in these cases have demonstrated a substantial burden on their religious exercise, and the justification offered by the city in both cases is not compelling, these cases likely would be violations of RLUIPA, assuming certain jurisdictional requirements of the statute are met.

- **Religious institutions must be treated as well as comparable secular institutions.**

Section 2(b)(1) of RLUIPA provides that religious assemblies and institutions must be treated at least as well as nonreligious assemblies and institutions. This is known as the “equal terms” provision of RLUIPA.

A mosque leases space in a storefront, but zoning officials deny an occupancy permit since houses of worship are forbidden in that zone. However, fraternal organizations, meeting halls, and place of assembly are all permitted as of right in the same zone.

Because the statute on its face favors nonreligious places of assembly over religious assemblies, this example would be a violation of 2(b)(1).

- **RLUIPA bars discrimination among religions.**

Section 2(b)(2) of RLUIPA bars discrimination “against any assembly or institution on the basis of religion or religious denomination.”

A Hindu congregation is denied a building permit despite meeting all of the requirements for height, setback, and parking required by the zoning code. The zoning administrator is overheard making a disparaging remark about Hindus.

If it were proven that the permit was denied because the applicants were Hindu, this would constitute a violation of 2(b)(2).

- **Zoning ordinances may not totally exclude religious assemblies.**

Section 2(b)(3)(A) of RLUIPA provides: “No government shall impose or implement a land use regulation that totally excludes religious assemblies from a jurisdiction.”

A town, seeking to preserve tax revenues, enacts a law that no new churches or other houses of worship will be permitted.

Such total exclusions of religious assemblies are explicitly forbidden by section 2(b)(3)(A).

- **RLUIPA forbids laws that unreasonably limit houses of worship.**

Section 2(b)(3)(B) of RLUIPA provides: “No government shall impose or implement a land use regulation that unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.”

A city has no zones that permit houses of worship. The only way a church may be built is by having an individual parcel rezoned, a process which in that city takes several years and is extremely expensive.

This zoning scheme, if proven to be an unreasonable limitation on houses of worship, would constitute a violation of section 2(b)(3)(B).

Enforcement of RLUIPA Rights

Religious institutions and individuals whose rights under RLUIPA are violated may bring a private civil action for injunctive relief and damages. The Department of Justice also can investigate alleged RLUIPA violations and bring a lawsuit to enforce the statute. The Department can obtain injunctive, but not monetary, relief.

If you believe that your rights under RLUIPA may have been violated and you wish to file a complaint or find out more information about the law, you may write to:

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

or call the Housing and Civil Enforcement Section at (800) 896-7743. Further information about RLUIPA is available at the Section website at <http://www.usdoj.gov/crt/housing/index.html>. Information about the Civil Rights Division’s religious liberties initiative, the First Freedom Project, is available at www.FirstFreedom.gov. You also may call the Special Counsel for Religious Discrimination at (202) 353-8622.

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

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

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

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

The Fair Housing Act makes it unlawful --

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

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

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

DATE: AUGUST 18, 1999

Questions and Answers
on the Fair Housing Act and Zoning

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

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

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

The term "group home" does not have a specific legal meaning. In this statement, the term "group home" refers to housing occupied by groups of unrelated individuals with disabilities.⁽²⁾ Sometimes, but not always, housing is provided by organizations that also offer various services for individuals with disabilities living in the group homes. Sometimes it is this group home operator, rather than the individuals who live in the home, that interacts with local government in seeking permits and making requests for reasonable accommodations on behalf of those individuals.

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

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

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

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

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

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

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

A local government may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions are imposed on all such groups. Thus, in the case where a family is defined to include up to six unrelated people, an ordinance would not, on its face, violate the Act if a group home for seven people with disabilities was not allowed to locate in a single family zoned neighborhood, because a group of seven unrelated people without disabilities would also be disallowed. However, as discussed below, because persons with disabilities are also entitled to request reasonable accommodations in rules and policies, the group home for seven persons with disabilities would have to be given the opportunity to seek an exception or waiver. If the criteria for reasonable accommodation are met, the permit would have to be given in that instance, but the ordinance would not be invalid in all circumstances.

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

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

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

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

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

By contrast, a fifty-bed nursing home would not ordinarily be considered an appropriate use in a single-family neighborhood, for obvious reasons having nothing to do with the disabilities of its residents. Such a facility might or might not impose significant burdens and expense on the community, but it would likely

create a fundamental change in the single-family character of the neighborhood. On the other hand, a nursing home might not create a "fundamental change" in a neighborhood zoned for multi-family housing. The scope and magnitude of the modification requested, and the features of the surrounding neighborhood are among the factors that will be taken into account in determining whether a requested accommodation is reasonable.

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

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

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

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

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

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

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

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

The great majority of group homes for persons with disabilities are subject to state regulations intended to protect the health and safety of their residents. The Department of Justice and HUD believe, as do responsible group home operators, that such licensing schemes are necessary and legitimate. Neighbors

who have concerns that a particular group home is being operated inappropriately should be able to bring their concerns to the attention of the responsible licensing agency. We encourage the states

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

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

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

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

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

For example, neighbors and local government officials may be legitimately concerned that a group home for adults in certain circumstances may create more demand for on-street parking than would a typical family. It is not a violation of the Fair Housing Act for neighbors or officials to raise this concern and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the application, if another type of facility would ordinarily be denied a permit for such parking problems. However, if a group of individuals with disabilities or a group home operator shows by credible and un rebutted evidence that the home will not create a need for more parking spaces, or submits a plan to provide whatever off-street parking may be needed, then parking concerns would not support a decision to deny the home a permit.

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

In the course of litigation addressing group homes for persons with disabilities, the issue has arisen whether the Fair Housing Act also provides protections for group living arrangements for children. Such living arrangements are covered by the Fair Housing Act's provisions prohibiting discrimination against families with children. For example, a local government may not enforce a zoning ordinance which treats group living arrangements for children less favorably than it treats a similar group living arrangement for unrelated

adults. Thus, an ordinance that defined a group of up to six unrelated adult persons as a family, but specifically disallowed a group living arrangement for six or fewer children, would, on its face, discriminate on the basis of familial status. Likewise, a local government might violate the Act if it denied a permit to such a home because neighbors did not want to have a group facility for children next to them.

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

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

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

In matters involving zoning and land use, HUD does not issue a charge of discrimination. Instead, HUD refers matters it believes may be meritorious to the Department of Justice which, in its discretion, may decide to bring suit against the respondent in such a case. The Department of Justice may also bring suit in a case that has not been the subject of a HUD complaint by exercising its power to initiate litigation alleging a "pattern or practice" of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

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

If HUD determines that there is no reasonable basis to believe that there may be a violation, it will close an investigation without referring the matter to the Department of Justice. Although the Department of Justice would still have independent "pattern or practice" authority to take enforcement action in the matter that was the subject of the closed HUD investigation, that would be an unlikely event. A HUD or Department of Justice decision not to proceed with a zoning or land use matter does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation. HUD attempts to conciliate all Fair Housing Act complaints that it receives. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

1. The Fair Housing Act uses the term "handicap." This document uses the term "disability" which has exactly the same legal meaning.
2. There are groups of unrelated persons with disabilities who choose to live together who do not consider their living arrangements "group homes," and it is inappropriate to consider them "group homes" as that concept is discussed in this statement.

>

Updated August 6, 2015