

## **Guilty until proven harmless.....maybe.**

Housing Rights, Inc. of Berkeley, California recently completed a study of zoning and land-use practices in 11 jurisdictions in the Counties of Alameda and Contra Costa County. We found that housing, in particular housing for persons with disabilities is treated very differently by local government than housing for persons who are not disabled. And this differential treatment appears to be traditional or historical rather than based upon fact.

It also appears that local ordinances which hold out housing for persons with disabilities to be treated differently than housing for non-disabled persons is based upon an assumption that this type of housing and these types of people are nuisances or problems for the community BEFORE there is any evidence to support that assumption. In fact, almost all of the research that has been conducted to study the impact of group housing of various types on a community show no or a positive impact.

We are not denying that many communities have experienced 'problem' residential situations where poor property management or exploitation of disabled tenants occurs. It does, and so do 'crack' houses and domestic violence and houses with too many teenagers and too many cars. But in this country (unless, it appears, you are a person with a disability) we are considered innocent until proven guilty. So these problem situations occur, neighbors and local officials attempt to resolve the problems and life goes on. However, for housing for persons with disabilities, the sponsor of the housing or the intended tenants themselves have to prove that they are 'harmless' or will be harmless to the community before they can move in. Guilty until proven harmless.....maybe. Because in many situations even when proof is given, the housing is not allowed because the real issue is fear and ignorance.

Housing Rights, Inc. hopes that by pointing out these inconsistencies and unfair practices that local communities can work together to remove the barriers that exist to prevent or control housing for persons with disabilities and improve the quality of life to all citizens, including persons with disabilities. Our project is described below.

This HUD funded project: the Zoning and Land-Use Compliance Project of Alameda and Contra Costa Counties (FHIP Grant # FH600G94-00076) modeled its investigative efforts after the type of testing that is conducted for complaints of discrimination in rental housing. That is, a trained tester visited the zoning counter of each of the 11 jurisdictions, presenting herself as an individual who wanted to open a group living situation for her son and seven other individuals, all who have a mental illness.

In addition to this 'test' of the zoning counter the project included a simple analysis of the jurisdictions zoning ordinances. This analysis was based upon two principles: was housing for persons with disabilities treated differently than housing for persons without disabilities and were there inconsistencies within the ordinances.

## Summary of the results of the 11 tests:

When presented with the scenario, the planners at the various zoning counters, were most concerned with the terms “disabled” and “unrelated”. Some planners stated that the scenario presented a ‘gray area’.

The word disabled triggered the word “licensed”.

- A) Six beds or less. All of the planners knew State law requires licensed community care facilities of 6 or beds or less to be treated as single-family uses for zoning purposes. The planners felt comfortable saying that if the housing did not have more than six disabled persons there would not be any problems—the use would be allowed by rights in any single-family zone.
- B) More than six beds. The tester insisting that she would need to have eight residents in order for it to pencil out financially caused planners to ask whether the housing would be licensed. Generally, if the State required the house to be licensed then the local jurisdiction would require a conditional use permit.
- C) No care given. When the tester explained that there would not be any care given on site, that the residents would be living independently, sharing the housing as a single family would, the planners responded variously. Some said the use would be single-family, others thought it would be a boarding house.
- D) Boarding House. The planners who called the proposed household a boarding house use questioned the tester about how the financing would work. They considered that the owner (whether the tester and spouse or their son) would be receiving compensation from the other residents; therefore, the owner would be receiving rent from the individual residents. The planners then indicated local definitions of boarding houses with limitations on boarders and allowable zones. The tester would indicate that what was being proposed was not a boarding house. The residents would all be sharing the housing and expenses. At this point, some of the planners suggested that a letter be written to the local zoning administrator. The zoning administrator would have to make the decision.

Some of the planners were able to understand the scenario as a group of unrelated individual sharing a house. Given this understanding, the planners responded variously, the following definitions:

- A) Zoning definition of “family” included unrelated individual living together a single housekeeping unit. (Therefore would be considered a single-family use.)
- B) Zoning definition of “family” which defined family in terms of “related by blood, marriage or adoption” was no longer used because of “some court cases”. The old definition was still on the books, but they knew the jurisdiction could not apply it.

- C) Zoning definition described a housekeeping unit of unrelated individuals with a cap on the number of unrelated individuals who could live together. Sometimes the planner was aware, or subsequently learned, that because of “court cases” the jurisdiction could not limit the number of unrelated individuals living together.
- D) Zoning definition described a housekeeping unit of unrelated individuals, without a cap on the number who could live together.

What is interesting about the responses is that there was some awareness of the City of Santa Barbara V. Adamson case, in which the California Supreme court ruled that the relationship of people living as a single housekeeping unit was protected by the privacy right of the California Constitution. What is disturbing is that this case was decided fifteen years ago (1980) and many zoning ordinances still have not been amended to reflect that decision.

Planners frequently informed the tester that ‘this type of housing’ causes neighbor concerns. The planners who concluded that it would be allowed by right as a single-family use wanted the tester to be aware of the types of issues which cause neighbor complaints: parking, traffic, noise. They did not address any issue related to disability, rather they were speaking to the issue of a group of unrelated individuals sharing a housing together (such as the problems caused by a group of students sharing housing).

Not one of the planners seemed aware of the federal or state fair housing law which prohibits discrimination against the disabled through zoning practices. This is disturbing because it shows 1) lack of in-house training and 2) a lack of professional continuing education.

**2)** A Project volunteer collected relevant zoning and land-use ordinances and then conducted a simple analysis of the material collected. The analysis was based upon two factors:

1. Was housing for person with disabilities held out to be treated differently than other housing of similar use?
2. Were there any inconsistencies, within the documents, in the treatment of housing for persons with disabilities.

### **Summary of the results of the ordinance analysis:**

The Municipal Code for each city and the two counties included in the Project were reviewed. Particular attention was paid to sections of the code related to land-use and zoning. Of particular interest were definitions of family, group living or residential care activities and the zones or districts in which group living or residential care activities were allowed in each community.

In general, there was very little agreement in the use of terms from code to code. Very often the terms used did not agree with state definitions either. For example, terms such as group living, group home, residential care facility and community care facility appeared to be used to mean the same type of housing arrangement. In some cases the terms were not defined in the code, leaving them open to various interpretations. Two other findings which are

important to mention: some of the definitions included for 'group home' included the provision of care as a characteristic of that type of housing. However, the code may not have mentioned licensing. According to state law, if care and supervision is provided, the facility must be licensed. When the term 'care' is not defined and licensing is not mentioned, the interpretation of what is intended by the jurisdiction is ambiguous and therefore open to the whim of changing staff and staff moods. A second finding was that because there may be services present or goals developed or rehabilitation available, the housing was held out and treated differently in the code.

**Housing for persons with disabilities, especially housing with necessary support, was frequently found to be held out as different from housing for persons who are not disabled.**

Summary of findings:

Definition of family. In two of the Municipal Codes studied, there were no definitions of family. Some of the Codes included a definition found to be illegal by the State Supreme Court in 1980 in *City of Santa Barbara v. Adamson*. Others included a post-Adamson definition based upon housekeeping unit and still others had a mixed definition which included both pre- and post-Adamson definitions and limited the number of unrelated persons living together (in violation of Adamson). And finally, some of the definitions included, in the definition of family, 'all necessary servants'. Whenever a definition of family recognizes only 'blood' relationships or limits the size of unrelated persons living together, this definition may be used as a barrier to keep housing for persons with disabilities out of a community.

Whether or not 'group housing' is allowed by right or at all in residential districts varies greatly among the cities and counties studied. In some of the jurisdictions (4) licensed facilities of six or under are allowed by right in all zones (which is consistent with state law). However, several of the cities and counties treated licensed facilities or housing with services much more restrictively. Some of the treatment include:

- ❖ Only allows facilities of six or under and only with a Conditional Use Permit (CUP)
- ❖ Only allows facilities or six or under and allows them by right
- ❖ Allows facilities of any size but only with a CUP
- ❖ Allows seven and over with a CUP (six and under by right)
- ❖ Seven or over is allowed but only in higher density zones
- ❖ Facilities of any size are only allowed in higher density zones
- ❖ Elderly facilities **only** are allowed
- ❖ Owner occupied facilities **only** are allowed

Two of the sites studied have human rights ordinances which state that discrimination in housing is not allowed. However, there was no mention of this in the zoning ordinances.

**Inconsistencies were found in the way housing for persons with disabilities was treated within some of the Municipal Codes.**

Even when a city or county has incorporated a definition of family which recognizes the right of unrelated individuals to form 'housekeeping units', they sometimes proceed, in other sections of the ordinances, to put housing for groups of individuals who receive support (licensed or not) as different from other residential uses.

And to this end, the inclusion of 'all necessary servants' (providing support to the family) in the definition of family, appears to be inconsistent. The city or county treats services/supports for related individuals (traditional family) differently that services/supports provided to unrelated individuals (housekeeping units).

By working together to overcome fear and ignorance and to create real solutions to real problems, we believe that communities will not only be safer for all members but better places to live.

For More Information Call Housing Rights, Inc. - 510-548-8776

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