

Select California Laws Relating to Residential Recovery Facilities and Group Homes

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I. Introduction

This paper summarizes two sources of protection for group homes and supportive housing under California law. First, it reviews state statutes that protect certain licensed group homes. Second, it explains California case law relating to the right of privacy, which prevents local governments from discriminating between families and unrelated individuals. It concludes by describing areas of uncertainty and suggesting strategies for local governments and for providers related to those issues.

II. Statutes Protecting Licensed Facilities

A complex set of statutes requires that cities and counties treat small, licensed group homes like single-family homes. Inpatient and outpatient psychiatric facilities, including residential facilities for the mentally ill, must also be allowed in certain zoning districts.

A. California Licensing Laws

California has adopted a complicated licensing scheme in which group homes providing certain kinds of care and supervision must be licensed. Some licensed homes cannot be closer than 300 feet to each other, while other licensed homes have no separation requirements. All licensed facilities serving six or fewer persons must be treated like single-family homes for zoning purposes.

While this section discusses some of the most common licensed facilities, it does not include every type of license or facility regulated in this very complex area of law.

1. Community Care Facilities

Community care facilities must be licensed by the California Department of Social Services (CDSS).¹ A "community care facility" is a facility where non-medical care and supervision are provided for children or adults in need of personal services.² Facilities serving adults typically provide care and supervision for persons between 18-59 years of age who need a supportive living environment. Residents are usually mentally or developmentally disabled. The services provided may include assistance in dressing and bathing; supervision of client activities; monitoring of food intake; or oversight of the client's property.³

CDSS separately licenses residential care facilities for the elderly and residential care facilities for the chronically ill. Residential care facilities for the elderly provide varying levels of non-medical care and supervision for persons 60 years of age or older.⁴ Residential care facilities for the chronically ill provide treatment for persons with AIDS or HIV disease.⁵

¹ Cal. Health & Safety Code 1500 *et seq.*

² Cal. Health & Safety Code 1502(a).

³ 22 Cal. Code of Regulations 80001(c)(2).

⁴ Cal. Health & Safety Code 1569.2(k).

⁵ 22 Cal. Code of Regulations 87801(a)(5).

2. Drug and Alcohol Treatment Facilities

The State Department of Drug and Alcohol Programs ("ADP") licenses facilities serving six or fewer persons that provide residential non-medical services to adults who are recovering from problems related to alcohol or drugs and need treatment or detoxification services.⁶ Individuals in recovery from drug and alcohol addiction are defined as disabled under the Fair Housing Act.⁷ This category of disability includes both individuals in licensed detoxification facilities and recovering alcoholics or drug users who may live in "clean and sober" living facilities.

3. Health Facilities

The State Department of Health Services and State Department of Mental Health license a variety of residential health care facilities serving six or fewer persons.⁸ These include "congregate living health facilities" which provide in-patient care to no more than six persons who may be terminally ill, ventilator dependent, or catastrophically and severely disabled⁹ and intermediate care facilities for persons who need intermittent nursing care.¹⁰ Pediatric day health and respite care facilities with six or fewer beds are separately licensed.¹¹

B. Protection from Land Use Regulations for Certain Licensed Facilities

Small facilities licensed under these sections of California law and serving six or fewer residents must be treated by local governments identically to single-family homes. Additional protection from discrimination is provided to certain psychiatric facilities. However, some group homes may be subject to spacing requirements.

1. Limitations on Zoning Control of Small Group Homes Serving Six or Fewer Residents

Licensed group homes serving six or fewer residents must be treated like single-family homes for zoning purposes.¹² In other words, a licensed group home serving six or fewer residents must be a permitted use in all residential zones in which a single-family home is permitted, with the same parking requirements, setbacks, design standards, and the like. No conditional use permit, variance, or special permit can be required for these small group homes unless the same permit is required for single-family homes, nor can parking standards be higher, nor can special design standards be imposed. The statutes specifically state that these facilities cannot be considered to

⁶ Cal. Health & Safety Code 11834.02.

⁷ 24 C.F.R. 100.201.

⁸ Cal. Health & Safety Code 1265 – 1271.1.

⁹ Cal. Health & Safety Code 1250(i).

¹⁰ Cal. Health & Safety Code 1250(e) and 1250(h).

¹¹ Cal. Health & Safety Code 1760 – 1761.8.

¹² This rule appears to apply to virtually all licensed group homes. Included are facilities for persons with disabilities and other facilities (Welfare & Inst. Code 5116), residential health care facilities (Health & Safety Code 1267.8, 1267.9, & 1267.16), residential care facilities for the elderly (Health & Safety Code 1568.083 - 1568.0831, 1569.82 – 1569.87), community care facilities (Health & Safety Code 1518, 1520.5, 1566 - 1566.8, 1567.1, pediatric day health facilities (Health & Safety Code 1267.9; 1760 – 1761.8), and facilities for alcohol and drug treatment (Health & Safety Code 11834.23).

be boarding houses or rest homes or regulated as such.¹³ Staff members and operators of the facility may reside in the home in addition to those served.

Homeowners' associations and other residents also cannot enforce restrictive covenants limiting uses of homes to "private residences" to exclude group homes for the disabled serving six or fewer persons.¹⁴

The Legislature in 2006 adopted AB 2184 (Bogh) to clarify that communities may fully enforce local ordinances against these facilities, including fines and other penalties, so long as the ordinances do not distinguish residential facilities from other single-family homes.¹⁵

2. Facilities Serving More Than Six Residents

Because California law only protects facilities serving six or fewer residents, many cities and counties restrict the location of facilities housing seven or more clients. They may do this by requiring use permits, adopting special parking and other standards for these homes, or prohibiting these large facilities outright in certain zoning districts. While this practice may raise fair housing issues, no published California decision prohibits the practice, and analyses of recent State legislation appear to assume that localities can restrict facilities with seven or more clients. Some cases in other federal circuits have found that requiring a conditional use permit for large group homes violates the federal Fair Housing Act.¹⁶ However, the federal Ninth Circuit, whose decisions are binding in California, found that requiring a conditional use permit for a building atypical in size and bulk for a single-family residence does not violate the Fair Housing Act.¹⁷

One specific statutory provision states that a congregate living *health* facility serving more than six persons is "subject to the conditional use permit requirements of the city or county in which it is located."¹⁸ It is not clear whether this section means that these facilities must be permitted in any zone with a use permit; or, that the facilities must obtain a use permit if the zoning district otherwise allows the facility with a use permit.

A city or county cannot require an annual review of a group home's operations as a condition of a use permit. The Ninth Circuit has held that an annual review provision of a special use permit was not consistent with the Fair Housing Act.¹⁹

In 2006, the Legislature passed a bill (SB 1322) sponsored by State Senator Cedillo that would have required all communities to designate sites where licensed facilities with seven or more residents could locate either as a permitted use or with a use permit. It was motivated by newspaper reports of suburban communities' "dumping" the mentally ill and homeless in big

¹³ For example, *see* Health & Safety Code 1566.3 & 11834.23.

¹⁴ Government Code 12955; Hall v. Butte Home Health Inc., 60 Cal. App. 4th 308 (1997); Broadmoor San Clemente Homeowners Assoc. v. Nelson, 25 Cal. App. 4th 1 (1994).

¹⁵ Health & Safety Code 1566.3; Chapter 746, Statutes of 2006.

¹⁶ ARC of New Jersey v. New Jersey, 950 F. Supp. 637 (D. N.J. 1996); Assoc. for Advancement of the Mentally Handicapped v. City of Elizabeth, 876 F. Supp. 614 (D. N.J. 1994).

¹⁷ Gamble v. City of Escondido, 104 F.3d 300, 304 (9th Cir. 1997).

¹⁸ Cal. Health & Safety Code 1267.16(c).

¹⁹ Turning Point, Inc. v. City of Caldwell, 74 F.3d 941 (9th Cir. 1996).

cities. The bill would also have severely limited communities' ability to deny these facilities by including them within the protections of the so-called "Anti-NIMBY Law"²⁰ (now renamed the Housing Accountability Act). It was vetoed by the Governor.

3. Siting of Inpatient and Outpatient Psychiatric Facilities

Cities must allow health facilities for both inpatient and outpatient psychiatric care and treatment in any area zoned for hospitals or nursing homes, or in which hospitals and nursing homes are permitted with a conditional use permit.²¹ "Health facilities" include residential care facilities for mentally ill persons. This means that if a zoning ordinance permits hospitals or nursing homes in an area, it must also permit all types of mental health facilities, regardless of the number of patients or residents. This is important because most cities are supportive of hospitals and nursing zones and may allow them in areas where they would normally not wish to allow large facilities for the mentally ill.

In one case, a residential care facility for 16 mentally ill persons was refused a permit in an R-2 zoning district where "rest homes" and "convalescent homes" were permitted, but not "nursing homes." Since the zoning district did not permit "nursing homes" or hospitals, the City believed that it was able to forbid the use in that zoning district. However, the court found that the City's definitions of "rest homes" and "convalescent homes" were very similar to its definition of "nursing homes"—rest homes and convalescent homes were, in effect, nursing homes—and so held that the City must allow the residential facility for mentally ill persons within that zoning district.²²

4. Separation Requirements for Certain Licensed Facilities

CDSS must deny an application for certain group homes if the new facility would result in "overconcentration." For community care facilities,²³ intermediate care facilities, and pediatric day health and respite care facilities,²⁴ "overconcentration" is defined as a separation of less than 300 feet from another licensed "residential care facility," measured from the outside walls of the structure housing the facility. Congregate living health facilities must be separated by 1,000 feet.²⁵

These separation requirements do *not* apply to residential care facilities for the elderly, drug and alcohol treatment facilities, foster family homes, or "transitional shelter care facilities," which provide immediate shelter for children removed from their homes. None of the separation requirements have been challenged under the federal Fair Housing Act, although separation requirements have been challenged in other states.²⁶

²⁰ Cal. Government Code 65589.5.

²¹ Cal. Wel. & Inst. Code 5120.

²² City of Torrance v. Transitional Living Centers, 30 Cal. 3d 516 (1982).

²³ Cal. Health & Safety Code 1520.5.

²⁴ Cal. Health & Safety Code 1267.9.

²⁵ Cal. Health & Safety Code 1267.9(b)(2).

²⁶ Based on cases from other states, the 1,000-foot limit for congregate living health facilities is unlikely to be upheld.

CDSS must submit any application for a facility covered by the law to the city where the facility will be located. The city may request that the license be denied based on overconcentration or may ask that the license be approved. CDSS cannot approve a facility located within 300 feet of an existing facility (or within 1,000 feet of a congregate living health facility) unless the city approves the application. Even if there is adequate separation between the facilities, a city or county may ask that the license be denied based on overconcentration.²⁷

These separation requirements apply only to facilities with the same type of license. For instance, a community care facility would not violate the separation requirements even if located next to a drug and alcohol treatment facility.

C. Facilities That Do Not Need a License

Housing in which some services are provided to persons with disabilities may not require licensing. In housing financed under certain federal housing programs, including Sections 202, 221(d)(3), 236, and 811, if residents obtain care and supervision independently from a third party that is not the housing provider, then the housing provider need not obtain a license.²⁸ "Supportive housing" and independent living facilities with "community living support services," both of which provide some services to disabled people, generally do not need to be licensed.²⁹ Recovery homes providing group living arrangements for people who have *graduated* from drug and alcohol programs, but which do not provide care or supervision, also do not need to be licensed.³⁰

The result is that many situations exist where persons with disabilities will live together and receive some services in unlicensed facilities. Because State law does not require that these facilities be treated as single-family homes, some communities have attempted to classify them as lodging houses or other commercial uses and require special permits. Distinguishing a "lodging house" from a "residence" is discussed in more detail in the next section. However, courts in other jurisdictions have found that when the state does not provide a license for a type of facility, cities cannot discriminate against facilities merely because they are unlicensed.³¹ Although there is no case on point in California or the Ninth Circuit, there may be both a fair housing and equal protection argument against requiring a use permit for an unlicensed group home with six or fewer residents when a licensed group home does not require a permit. This is discussed in more detail below.

Assemblymember Bogh introduced legislation in 2006 to make clear that communities *could* regulate *unlicensed* facilities with six or fewer residents. The legislation was ultimately amended to remove this provision after receiving fierce opposition from advocates for the disabled and State agencies responsible for finding placements for foster children and recovering drug and alcohol abusers.

²⁷ See, e.g., Cal. Health & Safety Code 1520.5(d).

²⁸ Cal. Health & Safety Code 1505(p).

²⁹ Cal. Health & Safety Code 1504.5.

³⁰ Cal. Health & Safety Code 1505(i).

³¹ North-Shore Chicago Rehabilitation Inc. v. Village of Skokie, 827 F. Supp. 497 (1993).

D. Protection from Discrimination in Land Use Decisions

California's Planning and Zoning Law prohibits discrimination in local governments' zoning and land use actions based on (among other categories) familial status, disability, or occupancy by low to middle income persons.³² It also prevents agencies from imposing different requirements on single-family or multifamily homes because of the familial status, disability, or income of the intended residents.³³

In general, the statute serves the same purposes and requires the same proof as a violation of the federal Fair Housing Act.³⁴ However, federal fair housing law does not specifically limit discrimination based on *income*,³⁵ and the State statute provides another potential claim that may be relevant when a group home is denied.

III. Protections Provided by the California Right to Privacy

Unlike the federal Constitution, California's Constitution contains an *express* right to privacy, adopted by the voters in 1972. The California Supreme Court has found that this right includes "the right to be left alone in our own homes" and has explained that "the right to choose with whom to live is fundamental."³⁶ Consequently, the California courts have struck down local ordinances that attempt to control *who* lives in a household—whether families or unrelated persons, whether healthy or disabled, whether renters or owners. On the other hand, the courts will support ordinances that regulate the *use* of a residence for commercial purposes.

Communities opposed to certain unlicensed facilities, such as halfway houses, clean and sober houses, and supportive housing, have attempted to define them as commercial *uses* rather than restricting *who* lives there.

A. Families v. Unrelated Persons in a Household

In many states, local communities can control the number of unrelated people permitted to live in a household. However, based on the privacy clause in the State Constitution, California case law requires cities to treat groups of related and unrelated people identically when they function as one household.³⁷ Local ordinances that define a "family" in terms of blood, marriage, or adoption, and that treat unrelated groups differently from "families," violate California law. California cities cannot limit the number of unrelated people who live together while allowing an unlimited number of family members to live in a dwelling.

In the lead case of *Adamson v. City of Santa Barbara*, Mrs. Adamson owned a very large 6,200 sq. ft., 10-bedroom single-family home that she rented to twelve "congenial people." They became "a close group with social, economic, and psychological commitments to each other.

³² Cal. Gov't Code 65008(a) and (b).

³³ Cal. Gov't Code 65008(d)(2).

³⁴ *Keith v. Volpe*, 858 F.2d 467, 485 (9th Cir. 1987).

³⁵ *Affordable Housing Development Corp. v. City of Fresno*, 433 F.3d 1182 (2006).

³⁶ *Coalition Advocating Legal Housing Options v. City of Santa Monica*, 88 Cal. App. 4th 451, 459-60 (2001).

³⁷ *City of Santa Barbara v. Adamson*, 27 Cal. 3d 123, 134 (1980).

They shared expenses, rotated chores, ate evening meals together" and considered themselves a family.

However, Santa Barbara defined a family as either "two (2) or more persons related by blood, marriage or legal adoption living together as a single housekeeping unit in a dwelling unit," or a maximum of five unrelated adults. The court considered the twelve residents to be an "alternate family" that achieved many of the personal and practical needs served by traditional families. The twelve met half the definition of "family," because they lived as a single housekeeping unit. However, they were not related by blood. The court found that the right of privacy guaranteed them the right to choose whom to live with. The purposes put forth by Santa Barbara to justify the ordinance—such as a concern about parking—should be handled by neutral ordinances applicable to all households, not just unrelated individuals, such as applying limits on the number of cars to *all* households. "*In general, zoning ordinances are much less suspect when they focus on the use than when they command inquiry into who are the users.*"³⁸

Despite this long-standing rule, a 2002 study found that *one-third* of local zoning ordinances, including that of the City of Los Angeles, still contained illegal definitions of "family" that included limits on the number of unrelated people in a household.³⁹ While most cities were aware that these limits were illegal and did not enforce them, interviews with staff members in the City of Los Angeles, for example, found that many did attempt to enforce the limits on the number of unrelated persons.⁴⁰

If a group of people living together can meet the definition of a "household" or "family," there is no limit on the number of people who are permitted to live together, except for Housing Code limits discussed in the next section. By comparison, many ordinances regulate licensed group homes more strictly if they have seven or more residents, by defining such licensed facilities as a separate *use*.

Since *Adamson*, the California courts have struggled to determine when zoning ordinances are focusing on the *occupants* of the home and when they are focusing on the *use* of the home. In particular, courts have struck down ordinances that:

- Limited the residents of a second dwelling unit to the property owner, his/her dependent, or a caregiver for the owner or dependent.⁴¹
- Allowed owner-occupied properties to have more residents than renter-occupied properties.⁴²
- Imposed regulations on tenancies-in-common that had the effect of requiring unrelated persons to share occupancy of their units with each other.⁴³

³⁸ *Adamson*, 27 Cal. 3d at 133.

³⁹ Housing Rights, Inc., *California Land Use and Zoning Campaign Report 27-28* (2002).

⁴⁰ Kim Savage, *Fair Housing Impediments Study 37* (prepared for Los Angeles Housing Department) (2002).

⁴¹ *Coalition Advocating Legal Housing Options v. City of Santa Monica*, 88 Cal. App. 4th 451 (2001).

⁴² *College Area Renters and Landlords Assn. v. City of San Diego*, 43 Cal. App. 4th 677 (1996). However, this case was decided primarily on equal protection grounds, rather than on the right of privacy.

⁴³ *Tom v. City & County of San Francisco*, 120 Cal. App. 4th 674 (2004).

On the other hand, the courts have upheld regulations when they were convinced that the city's primary purpose was to prevent non-residential or commercial *use* in a residential area. In particular, the courts have upheld ordinances that:

- Regulated businesses in single-family residences ("home occupations") and limited employees to residents of the home.⁴⁴
- Prohibited short-term transient rentals of properties for less than thirty days.⁴⁵

B. Occupancy Limits

The Uniform Housing Code (the "UHC") establishes occupancy limits—the number of people who may live in a house of a certain size—and in almost all circumstances municipalities may not adopt more restrictive limits. The UHC provides that at least one room in a dwelling unit must have 120 square feet. Other rooms must have at least 70 square feet (except kitchens). If more than two persons are using a room for sleeping purposes, there must be an additional 50 square feet for each additional person.⁴⁶ Using this standard, the occupancy limit would be seven persons for a 400-sq. ft. studio apartment (the size of a standard two-car garage). Locally adopted occupancy limits cannot be more restrictive than the UHC unless justified based on local climatic, geological, or topographical conditions. Efforts by cities to adopt more restrictive standards based on other impacts (such as parking and noise) have been overturned in California.⁴⁷

Similarly, the Ninth Circuit found that a local ordinance that limited the number of persons in a homeless shelter to 15, when the building code would allow 25 persons, was unreasonable, and found that allowing 25 persons in the shelter would constitute a reasonable accommodation.⁴⁸

Based on these federal and state precedents, localities may not limit the number of people living in a dwelling below that permitted by the UHC.

C. Defining Unlicensed Facilities as Lodging Houses

Communities often attempt to define certain group residences, such as sober living homes, as "lodging houses," "boarding houses" or "rooming homes" so that they can be regulated more strictly. Lodging houses typically require a conditional use permit and are not permitted in single-family residential zones. Potential locations for sober living houses would be severely limited if they could not be located in single-family areas.

A recent opinion of the State Attorney General found that communities may prohibit or regulate the operation of a lodging house in a single family zone in order to preserve the residential character of the neighborhood.⁴⁹ Here the City of Lompoc defined a lodging house as "a

⁴⁴ City of Los Altos v. Barnes, 3 Cal. App. 4th 1193 (1992).

⁴⁵ Ewing v. City of Carmel, 234 Cal. App. 3d 1579 (1991).

⁴⁶ Cal. Health and Safety Code 17922(a)(1). See Briseno v. City of Santa Ana, 6 Cal. App. 4th 1378, 1381-82 (1992) (holding that the state Uniform Housing Code preempts local regulation of occupancy limits).

⁴⁷ Briseno, 6 Cal. App. 4th at 1383.

⁴⁸ Turning Point, Inc. v. City of Caldwell, 74 F.3d 941 (9th Cir. 1996).

⁴⁹ 86 Op. Att'y Gen'l Cal. 30 (2003).

residence or dwelling . . . wherein three or more rooms, with or without individual or group cooking facilities, are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent or rental manager is in residence." The Attorney General agreed that a lodging house could be considered a *commercial* use and so could be prohibited in residential areas.

To avoid being subject to such a provision, all residents of the dwelling would need to sign the lease or rental agreement, so that it could not be argued that the rooms were rented under separate agreements.

Cities have also sought to distinguish lodging houses from residences by requiring that all occupants in a residence have common use of and access to all living and eating areas and food preparation and service areas. Some also seek to distinguish transient use from permanent residence. For instance, one city states in a publication on residential care homes that:

"Court cases have recognized that a family represents an intentionally structured relationship between the occupants implying a permanent, long-term relationship as opposed to one that is short-term or transient. The latter includes roominghouse, halfway, and sober/drug-free living homes where the person is at the home for a defined period and then is required to move to more permanent living arrangements..."

The *Adamson* court did not specifically address the issue of transiency (although some of the cases on which it relied considered this to be a factor). The above definition would appear to require a fairly intrusive investigation into the precise relationship between residents living in a clean and sober house.

Ordinances requiring greater regulation for *unlicensed* homes with fewer services than *licensed* homes providing more services may well raise equal protection and fair housing issues. For example, a Connecticut court found evidence of discriminatory decision-making where a city classified a clean and sober house as a boarding house and enforced a zoning restriction against the house in response to neighborhood opposition. The court listed among factors it considered in finding evidence of discriminatory intent "the decision's historical background," "the specific sequence of events leading up to the challenged decision," and "departures from the normal procedural sequences."⁵⁰

If a group is challenged as not constituting a single housekeeping unit, it will likely assert that it is indeed operating as a single unit. Unless there is public information available showing that a residence is operated as a lodging house (e.g., an ad saying, "Rooms for Rent"), an investigation would be required to demonstrate otherwise. If complaints were based primarily on the disability of the occupants (which could include their status as recovering drug and alcohol abusers), then California privacy rights and fair housing laws might be implicated. In one Washington, D.C., case, a federal district court found a violation of the federal Fair Housing Act where the Zoning Administrator carried out a detailed investigation of a residence for five mentally ill men in response to neighbors' concerns, finding that the Zoning Administrator's actions were motivated

⁵⁰ Tsombanidis v. City of West Haven, 180 F. Supp. 2d 262, 286-88 (D. Conn. 2001).

in part by the neighbors' fears about the residents' mental illness.⁵¹ In California, a similar challenge might be additionally based on rights of privacy and equal protection concerns.

In general, the courts look with particular disfavor on local decisions that appear to have been influenced by neighborhood opposition to the types of people who will live there.

IV. Best Practices

A. Local Agencies

In advising our public agency clients, we recommend that they treat unlicensed facilities identically to licensed facilities, allowing facilities with six or fewer persons to be treated like single-family homes. This avoids what may be a losing battle to force supportive housing into the "lodging house" definition.

For facilities with seven or more residents, the challenge for a local agency is to define an unlicensed facility as a *use* that is different from a residence. The Attorney General's opinion provides guidance to those wishing to define these facilities as lodging houses. Others have defined "residential service facilities" as a separate use. One such definition reads as follows:

Residential Service Facility. A residential facility, other than a residential care facility or single housekeeping unit, designed for the provision of personal services in addition to housing, or where the operator receives compensation for the provision of personal services in addition to housing. Personal services may include, but are not limited to, protection, care, supervision, counseling, guidance, training, education, therapy, or other nonmedical care.

Because this definition is more related to care than is the definition of a lodging house, it may be perceived as being directed at disabled persons and hence more subject to challenge as intentionally discriminatory. It can also force supportive housing and foster care homes (which are not usually the target of community wrath) into lengthy and complicated processes.

Other defensible ordinances would attempt to control the behavior or actions that the community finds offensive: too many cars, groups smoking outdoors, too much noise. In trying to control these problems, local agencies have been constrained since *Adamson* by being required to apply ordinances uniformly to traditional families and to households made up of unrelated people. For instance, communities could deal with complaints about too many cars by limiting the number of vehicles that could be parked at a home—but the ordinance would also need to apply to families with two teenagers and four cars. Controls on outdoor cigarette smoking would similarly need to be applied uniformly. Consequently, developing controls on offensive behavior is a challenge.

B. Service Providers

We advise our nonprofit sponsors that if a facility with more than six persons can be considered a single housekeeping unit, the facility must be treated as a residence with one family residing in it. The most defensible structure for such a facility would be to:

⁵¹ Community Housing Trust v. Dep't of Consumer & Regulatory Affairs, 257 F. Supp. 2d 208 (D.D.C. 2003).

- Have one rental agreement or lease signed by all *occupants*. If, instead, the provider signs the lease and each resident has a verbal or written agreement with the provider, then the facility could be considered a "lodging house" under the definition upheld by the Attorney General.
- Give all residents equal access to all living and eating areas and food preparation and service areas.
- Do not require occupants to move after a certain period of time, except for time limits imposed by the rental agreement or lease with the owner.

V. Conclusion

In my own experience as a former city official, many group homes were invisible in the community and caused few problems. Most complaints about overcrowding and excessive vehicles did not involve a group home, but rather the poorest areas where space was rented out to the limits of the Housing Code.

The group homes that caused the most concern were sober living facilities which tended to concentrate in certain inexpensive single-family neighborhoods. In one case, all five homes on one block face were purchased by a single owner. He was knowledgeable about his rights but unconcerned about his obligations, and sneered at the City's and neighborhood's concerns. Without required licensing, there was no regulatory oversight. When the occupant of one home was arrested for drug dealing, it caused an uproar.

Many providers are conscious of their position in neighborhoods and make an effort to accommodate community concerns. Others may be perceived as arrogant and dismissive of local concerns, viewing all neighbors as "NIMBYs." Providers who view themselves as part of the community and set house rules that encourage community involvement, restrict noise, control parking, and establish smoking locations not visible from the street can go a long way toward abating perceived problems.

Cities should modify their zoning ordinances to address unlicensed group homes and decide on a strategy for dealing with group homes with seven or more persons (use permit and reasonable accommodation). State legislation requiring some minimal licensing for sober living facilities would also be beneficial to set standards for minimal levels of care, along with minimal separation requirements to maintain the "community integration" purpose of the statutes. Cities need also to avoid the kind of incidents that result in the Legislature's willingness to further constrain local control of these homes.

SUMMARY: GROUP HOME ANALYSIS

IF LICENSED:

6 or fewer clients:

Must be treated like a single-family home for all zoning purposes, except for spacing requirements for certain licensed facilities (eg, community care facilities). Community care facilities for the elderly and drug and alcohol treatment centers do not have spacing requirements.

7 or more clients:

Psychiatric facilities—both inpatient and outpatient—must be permitted in any zone that permits nursing homes or hospitals as conditional or permitted uses. (City of Torrance v. Transitional Living Centers)

Other licensed facilities are often subject to a use permit and may not be permitted in certain zones. Advocates may request a reasonable accommodation to avoid use permit requirements. But the Ninth Circuit has not found a use permit *per se* to violate the Fair Housing Act. (Gamble v. City of Escondido)

IF UNLICENSED:

Can it be considered a single housekeeping unit? Or can it be defined as a boarding house or another use? (Adamson v. City of Santa Barbara) Only the *use* can be regulated, not the *user*. Unlicensed homes are more likely to be considered as a single housekeeping unit if they meet the following tests:

- Physical design: all have access to common areas, kitchens; laundry is free; one mailbox; looks like a home.
- No limits on term of occupancy ["must move after 3 months"]
- All residents on lease or rental agreement [AG's opinion]

There are different *local* definitions of various uses relating to the qualification of unlicensed homes as a single housekeeping unit. (For instance, some localities do not use the existence of separate rental agreements as a test for a single housekeeping unit.)

6 or fewer clients: equal protection or fair housing argument if treated more strictly than licensed facilities.