

THREE LEGAL PROTECTIONS CALIFORNIA LOCAL GOVERNMENTS AND PROVIDERS OF SOBER AND OTHER INDEPENDENT LIVING FOR PERSONS WITH DISABILITIES NEED TO KNOW

July 2009

1. Definition of Family: Why sober living and other independent living homes may locate in residential zones in California

In a 1980 California Supreme Court decision, *City of Santa Barbara v. Adamson*, the court ruled, based on privacy rights, that definitions of “family” for purposes of zoning cannot distinguish between related and unrelated individuals. Therefore, local governments cannot limit the number of unrelated adults that may reside together functioning as a family if they do not limit the number of related persons. However, several local governments still use or enforce an illegal definition of family.

Following are examples of legal definitions of family local governments can use:

Example 1

One or more persons living together as single house-keeping unit

Example 2

One or more persons, related or unrelated, living together as a single integrated household in a dwelling unit

Sober living and other independent living for persons with disabilities that function as a family do not provide care, treatment, individual or group counseling, case management, medication management, or treatment planning and do not supervise daily activities. Therefore, sober living and independent living residences that function as a family are not subject to state licensure requirements. What they do provide is a supportive family-like setting for unrelated adults. Following are typical characteristics of a family

- ◆ The formation of close emotional and psychological bonds
- ◆ Commitment to each other and emotional support
- ◆ Rotation of chores
- ◆ Eat evening meals together
- ◆ Socialize together and engage in shared activities of their choosing

Families may employ staff to support household functions. It is not uncommon for family members to go to out patient medical services or receive home health services. They may hold social meetings in their homes. Residents of these households have equal access to the entire dwelling.

Because these homes are neither boarding houses nor commercial enterprises they should not be treated as such by local governments.

2. Types of group homes the California Health & Safety Code “six and under” provisions do and do *not* apply to

Many local governments are not aware of the regulatory distinctions between group homes required to be state licensed and those that are not. Facilities that are required to be licensed are those that provide care, rehabilitation and other forms of treatment, client supervision and medication dispensing or management.

California law exempts licensed residential treatment or board and care facilities with six or fewer people from being subject to local zoning and land use regulations.

“... local governments cannot limit the number of unrelated adults that may reside together functioning as a family. . . .”

(Health & Safety Code Section 1566.3 for Community Care facilities and Section 11834.22 for licensed alcohol and drug facilities) These sections of the Health & Safety Code only apply to licensed facilities and never apply to residences that are not required to be state licensed.

Unfortunately, many local governments erroneously apply the “six and under” provision to sober living and other independent living residences, inappropriately citing them for code violations requiring that the residence must have six or fewer residents, or have a conditional use permit (CUP) or other type of administrative use permit, or must become state licensed, none of which apply.

Furthermore, local governments cannot require zoning or land use permits or restrictions for a residence that is not required to be licensed that is not imposed on all residences in the jurisdiction.

For a thumbnail description of which laws apply to which types of group homes for persons with disabilities in California go to <http://futuresassociates.org/publications/20090205Distinction.pdf>

3. How fair housing laws apply to zoning and land use for housing for persons with disabilities

Federal and state fair housing laws provide protections from housing discrimination for persons with disabilities. Disability, according to fair housing laws, includes but is not limited to the mentally ill and those addicted to alcohol and other drugs. Housing includes licensed residential treatment programs as well as sober living and other independent living homes where individuals with disabilities reside as a family for an extended period as opposed to an overnight or “hotel” situation.

Following are a couple of examples of situations in which local governments are at risk for violating fair housing laws:

- ◆ When restrictive policies and regulations are based on conjecture, not evidence. For instance, a local government may state that “these homes create neighborhood impairment ,” but offer no evidence to support that supposition, such as jurisdiction-wide law enforcement statistics that indicate that these homes stand out as threats to community health and safety.
- ◆ When regulations or enforcement specifically target sober living or other independent living homes for persons with disabilities—when it is more about “who” is living in homes rather than “what” types of homes they are.



“ . . . many local governments erroneously apply the ‘six and under’ provision to sober living and other independent living residences . . . ”

To further understand how fair housing law applies to sober living and other independent living for persons with disabilities as well as licensed residential treatment, please review the FAQ referenced below. Even though this FAQ addresses alcohol and drug providers it also pertains equally to other group homes and residential treatment for persons with disabilities.

http://futuresassociates.org/publications/FAQ_Update_2008Aug_FINAL.pdf



Both housing providers and local governments are encouraged to consult with fair housing professionals regarding compliance with state and federal fair housing laws regarding local zoning and land use policy implementation and enforcement.

For more information please contact Deborah Smith Parker, Project Director at directly at dparker@astrologicspress.com

The Solutions for Treatment Expansion Project is funded by The California Endowment.