

MEMO

TO: Austin Reinhart
FROM: Attorney Amanda Jackson
DATE: May 3, 2016
RE: Fair Housing Act

This memo is for use in preparation of and assistance in applying for a conditional use permit and may be disseminated publically to provide background on the Fair Housing Act.

The Fair Housing Act of 1988 (“FHA”) includes several key elements that apply to your proposed sober living facility, specifically the FHA (a) Designated specific populations including substance abusers and mentally ill as handicapped and disabled; (b) Afforded residential treatment programs and group homes protection under the FHA; (c) Established that local governments have an affirmative duty to provide reasonable accommodation or flexibility when making decisions about zoning and land use regulations for persons with disabilities; (d) Provides persons with disabilities remedies under the law if they have been discriminated against; (e) Provides that any local regulations specifically designed to restrict residential and drug treatment programs or sober living residents that are not generally applicable to other comparable housing are in violation of fair housing laws and (f) Makes clear that if a local government uses community resistance as a basis for a decision to deny a Conditional Use Permit to a residential program for persons with disabilities it does so in violation of the Fair Housing Act.¹

In reviewing cases under the FHA, courts will consider whether there is (1) a disparate impact (2) a disparate treatment and (3) failure to provide a reasonable accommodation.² A violation of the FHA for disparate impact is found when there is the occurrence of certain outwardly neutral practices and a significantly adverse or disproportionate impact on persons of a particular type produced by the defendant’s facially neutral acts or practices.³ Disparate Treatment is treating one group differently than another similar group, which can only occur when the reasons to discriminate are based on legitimate safety concerns rather than on stereotypes. Courts have found that decisions based on neighborhood complaints over negative projections and stereotypical assumptions of characterizations of people with substance abuse disorder or other disabilities are in violation of the FHA. Arguments with respect to the health and safety of the neighborhood must be made on an individualized basis using specific criteria relative to the proposed facility and the individuals it will serve and be substantiated by facts.⁴ Lastly, a municipality must make a reasonable accommodation in rules, policies, practices or services when such accommodation may be necessary to afford

¹ See Federal Fair Housing Act 42 USC §3604 (c)-(f)

² See *Gamble v. City of Escondido*, 104 F.3d. 200, 304-305 (9th Cir. 1997)

³ *Gamble*, 104 F.3d at 306

⁴ See *Cnty. House, Inc. v. City of Boise* 490 F.3d 1041, 1050 (0th Cir. 2006)

individuals with disabilities an equal opportunity for use and enjoyment of a dwelling.⁵ Under this requirement, a municipality must change, waive or make exceptions in their zoning rules to afford people with disabilities the same access to housing provided such reasonable accommodation does not cause undue hardship, fiscal or administrative burdens on the municipality or undermine the basic purpose a zoning ordinance seeks to achieve, assuming such basis is not discriminatory.⁶ What constitutes a reasonable accommodation is determined on a case by case basis.

One test that can be used to determine if a land use or zoning regulation is discriminatory is if the regulation or determination focuses on who is to be served as opposed to what type of residence it is. The FHA makes it unlawful for the City to deny the conditional use permit *because of the disability of individuals who would live there*. Using the property at 1120 for a sober living facility is not likely to have any more impact on the neighborhood from a parking and use perspective than if it were turned into one or more commercial businesses which is what the property is zoned for. Further, given its location amongst businesses, public uses and other multi-tenant homes, it is not likely that use as a sober living home would significantly increase noise or traffic in the area or fundamentally change the characteristics of the neighborhood. Consequently, when reviewing the application for conditional use permit, the City should consider what if any reasonable accommodations can be made.

⁵ 42 U.S.C. §3604(f)(3)(B)

⁶ Oxford House v. Township of Cherry Hill 799 F.Supp 450, 463-466 (N.J.1992)