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April 19, 2024

Mr. Jeffrey E. Richards, C.B.O.  
Town of Weymouth  
Weymouth Town Hall  
75 Middle Street, 1st Floor  
Weymouth, MA 02189

**Re: 0 Green Street, Weymouth, Massachusetts**

Dear Building Commissioner Richards:

Zoroaster Homes, LLC (the “Proponent”) respectfully requests that the Town of Weymouth (“Weymouth”) provide reasonable accommodation under Title VIII of the Civil Rights Act of 1968, as amended, codified at 42 U.S.C. §§ 3601-3619, and 3631, and its regulations at 24 C.F.R. § 100 (collectively, the “Fair Housing Act” or “FHA”<sup>1</sup>) and M.G.L. c. 151B and its regulations at 804 C.M.R. 2.0<sup>2</sup>. This request is made on behalf of individuals intended to benefit from the Proponent’s congregate living facility, which is proposed to be located at 0 Green Street, Weymouth (the “Property”). The use proposed for this location is designed to assist elderly individuals, including veterans, members of the LGBTQ+ community, and those with mental health or physical disabilities, in obtaining housing accommodation (the “Proposed Use”). The Proposed Use is also protected by the Americans With Disabilities Act, and M.G.L. c. 40A, § 3, paragraph 4 regarding land-use requirements on congregate living arrangements. The project (the “Project”) to accommodate the Proposed Use is shown on the concept plan entitled,

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<sup>1</sup> The Fair Housing Act prohibits housing practices that discriminate against individuals on the basis of protected characteristics including race, color, national origin, sex (including gender identity and sexual orientation), disability, family status, and religion. Because the U.S. Constitution’s Supremacy Clause gives federal laws precedence over conflicting state and local laws, the Fair Housing Act prohibits state and municipal zoning ordinances and practices that discriminate based on a protected characteristic, whether explicitly or as applied in practice. See the [Joint Statement of the Department of Housing and Urban Development and the Department of Justice, State and Local Land Use Laws and Practices and the Application of the Fair Housing Act](#), attached hereto as [Exhibit A](#) and at <https://www.justice.gov/crt/page/file/909956/download>. See also the Memorandum of HUD dated February 11, 2021, entitled “Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act” addressing applicability of the Fair Housing Act to include discrimination on the basis of sexual orientation and gender identity, attached hereto as [Exhibit B](#).

<sup>2</sup> Massachusetts fair housing law set forth in M.G.L. c. 151B and regulations set forth in 804 C.M.R. 2.0 protect against discrimination based upon race, color, national origin, gender, gender identity, sexual orientation, disability, ancestry, genetic information, marital status, veteran or active military status, age, familial status, and source of income.

“Congregate Care Housing, Merryknoll Road & Green Street, Weymouth, Massachusetts,” Sheet SP-1, prepared by Sitec Engineering and Environmental Consultants, Inc., dated February 13, 2024, revised through April 18, 2024 (the “Plan”), a copy of which Plan is submitted with this request.

The reasonable accommodation requested is that you: (i) determine that the Proposed Use is a congregate residence akin to a detached one-family dwelling in the Resident District R-1 (“R-1 District”) consistent with M.G.L. c. 40A, § 3, paragraph 4 and Article IV, § 120-11 of the Weymouth Zoning Ordinance (the “Ordinance”); (ii) reasonably apply the Ordinance to the Proposed Use similarly to that of other single family residential dwellings, including confirmation that no other zoning requirements or approvals are applicable to the Proposed Use, and that the Project as shown on the Plan meets the Ordinance’s requirements for dimensions and parking; and (iii) make such other accommodations as are reasonable or necessary to allow the Project so that persons with a disability or otherwise subject to discriminatory impacts in housing have an equal opportunity to use and enjoy a dwelling in an R-1 neighborhood as do other persons.

Under the Fair Housing Act, reasonable accommodation requests may be submitted to any person or entity in a position to afford a person with a disability equal opportunity to use and enjoy a dwelling, including municipalities enforcing land use and zoning regulations. Weymouth is an entity to whom reasonable accommodation requests may be made, within the meaning of Weymouth’s roles, consistent with 42 U.S.C. § 3604(f)(3)(B) and 804 C.M.R. 201(6)(f). Through your role as chief zoning officer of Weymouth, you have the authority to interpret and apply the Ordinance and rules, policies, and practices of Weymouth to accommodate the intended residents at the Property.

The Proponent proposes to develop the Property with a single approximately 39,100 square foot two-story dwelling residence for up to forty-eight (48) elderly occupants, including veterans, members of the LGBTQ+ community, and those with mental health or physical disabilities, with shared cooking and living space. The residence will be organized into eight (8) internal groupings with up to six (6) persons located within the sub-areas or “pods” that contain private individual bedrooms. The pods will be flexible and based upon common interests or needs of the occupants in residence. For example, a pod could provide a common area for veterans or occupants from the LGBTQ+ community or persons in recovery. The residence will include universal design to offer accessible living for occupants who have physical disabilities at the time of entry, as well as occupants as they age in place. Home health care would be arranged for care at the residence by residents as needed by each resident. As shown on the Plan, the Proponent proposes twenty-four (24) parking spaces for the occupants, staff, and guests. Medical transportation would be arranged through the Weymouth Elder Services Transportation Program.

Because the residence is proposed to be located next to Weymouth’s Whipple Senior Center, the residence would provide optimal access to programs and supports for seniors. The residence has been conceived and is designed to provide a significant opportunity to avoid

loneliness and develop supportive peer relationships. The congregate living residence provides peer support within a living community. The federal Center for Disease Control and Prevention (CDC) has found that loneliness and social isolation in seniors present profound public health risks that affect a significant number of older adults, and puts them at risk for dementia and other serious medical conditions. See Exhibit C, attached hereto. According to the CDC, seniors are at increased risk for loneliness and social isolation because they are more likely to live alone, have faced loss of family or friends, and have chronic illnesses and other conditions such as hearing loss. The CDC has found that loneliness is increased among immigrant and lesbian, gay, and bisexual populations, as compared to other groups. The social opportunities to be offered within pods, within the residence, and in the community and nearby senior center will all contribute to reduce the type of loneliness and isolation described by the CDC and its negative impacts.

The Proposed Use is complementary to the adjacent Whipple Senior Center building and provides easy pedestrian access to its residents to services and events afforded to other seniors in the neighborhood. The Proposed Use is protected by state and federal disability laws which prohibit housing and housing-related discrimination on the basis of race, color, national origin, religion, sex (including gender identity and sexual orientation), age, familial status, and disability. Protection for the intended residents to be served by the Proposed Use are found in the Fair Housing Act and M.G.L. c. 151B, which protect the rights of said individuals with respect to fair housing.

Although a municipal ordinance or bylaw might not be intentionally discriminatory, its disparate impact may result in the exclusion of certain protected classes from a residence in a district. Without a reasonable accommodation, seniors, including those who are veterans, members of the LGBTQ+ community, and those with mental health or physical disabilities, who would benefit from congregate living are excluded from the zoning district. The Proponent requests reasonable accommodation regarding Weymouth's rules, policies, practices, or services in the application of the Ordinance to the Property as it relates to the Proposed use. This accommodation is requested in order to afford disabled persons, and persons exposed to discriminatory impact on housing opportunity due to their age, veteran status, or sexual orientation or gender identity, with an equal opportunity to use and enjoy a dwelling within a single family neighborhood, within the meaning of 42 U.S.C. § 3604(f)(3)(B) of the FHA and § 4(7A)(2) of M.G.L. c. 151B, and so as not to prohibit the Proposed Use for unrelated senior, disabled, LGBTQ+ individuals, or those with veteran status in favor of Weymouth's stated preferred property uses of single family, planned unit developments, or municipal uses in the neighborhood in which the Property is located.

The Ordinance sets a higher hurdle for group residences serving unrelated persons, than for those able to live in single family homes, and such a use would otherwise be an entirely prohibited use in the R-1 zoning district where the Property is located. Pursuant to the Ordinance, no use category allowing residences other than one-family dwellings or municipal uses are allowed in the underlying R-1 zoning district without discretionary Special Permits (i.e., for

planned unit developments). No as-of-right use in the underlying zoning district includes residential group homes or congregate living facilities such as the Proposed Use for unrelated persons with disabilities or other protected statuses.

M.G.L. c. 40A, § 3, paragraph 4 provides, in pertinent part, that “[n]otwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination.” The zoning district allows only single family residential uses and municipal uses by-right, and planned unit developments by discretionary special permit. The R-1 District further requires that planned unit developments must have a minimum lot size of 25 acres per Article XV, § 120-63(B), so the Property does not qualify as a planned unit development.

As shown on the Plan, the Project complies with the dimensional requirements applicable in the R-1 District set forth in the dimensional table set forth in 120 Attachment 1 to the Ordinance. As shown on the Plan, twenty-four (24) parking spaces are provided, including two accessible parking spaces. Pursuant to Article XVII, § 120-74, in the R-1 District, single- and two-family dwellings must provide two off-street parking spaces for each dwelling unit (§ 120-74.B), and where requirements are not listed for a specific use, reasonable off-street parking requirements shall be determined by the Inspector of Buildings (§ 120-74.R). As specific requirement is not provided for a congregate dwelling for 48 occupants, and although the reasonable accommodation requested is for the proposed congregate use be considered a single dwelling under fair housing laws and M.G.L. c. 40A, § 3, para. 4, the Proponent has determined that two (2) spaces would not be sufficient for the Proposed Use. The Proponent requests that you determine that twenty-four (24) parking spaces is reasonable for the Proposed Use.

Based upon the expected occupants of the Project, the Proponent has determined that the Property would require no more than twenty-four (24) off-street parking spaces at any time. The Proponent expects at a maximum that no more than sixteen (16) (approximately one-third) of its occupants to own and operate automobiles while residing at the facility. The Proponent further expects that it would need no more than eight (8) spaces for professionals such as visiting nursing and home care assistants, and guests visiting the occupants at any time. Because most occupants are not anticipated to own or operate automobiles, the Proponent anticipates a need for no more than twenty-four (24) parking spaces for the occupants, staff, and guests.

Occupants of the Project will be encouraged to utilize alternative means of transportation, including, but not limited to (1) coordination with the Whipple Senior Center and Town of Weymouth Elder Services which provides services for seniors 60+ who are unable



to access other modes of transportation for appointments in and around Boston<sup>3</sup>, (2) use of nearby MBTA bus stops within  $\frac{3}{4}$  of a mile of the Property, (3) The RIDE paratransit service which provides door-to-door, shared-ride public transportation to people who cannot use the subway, bus, or trolley all or some of the time due to temporary or permanent disability, and (4) any food delivery services available through Medicare Advantage plans (if applicable) or otherwise (i.e., Instacart, Shaw's, etc.). Additionally, the Proponent is committed to cooperating with the Town of Weymouth with respect to any recommended rules with respect to parking on the site and encouraging alternative modes of transportation.

As shown on the Plan, two (2) driveways and a parking area to serve up to twenty-four (24) automobiles in size-compliant spaces would serve the Proposed Use, and all spaces are at least 9 feet by 18 feet. A total of 2 accessible spaces will be provided. Therefore, it is the Proponent's conclusion that sufficient off-street parking is provided for the Proposed Use, and we ask that you determine pursuant to Section 120-74.R that twenty-four (24) off-street parking spaces are required to serve the Proposed Use.

Accordingly, the Proponent is requesting a reasonable accommodation to be classified as a congregate living dwelling akin to a single-family dwelling under the Ordinance. Absent such a classification, the Proposed Use would not be allowed at the Property or in the R-1 zoning district. Such roadblocks are contrary to the FHA and state law, and its prohibition of activities that may "otherwise make unavailable or deny, a dwelling" to unrelated persons with handicaps, set forth in 42 U.S.C. § 3604(f)(1) or an "unlawful practice" under M.G.L. c. 151B.

The Proponent intends to provide housing to unrelated persons to assist elderly individuals, veterans, members of the LGBTQ+ community, and those with disabilities in obtaining housing accommodation. To discriminate or to otherwise make unavailable such dwellings because of the status and/or handicaps of those individuals is prohibited by 42 U.S.C. § 3604(f)(3)(B) of the Fair Housing Act, as well as state law. Under state law, "a 'reasonable accommodation' is one which would not impose an undue hardship or burden on the entity making the accommodation." Peabody Props., Inc. v. Sherman, 418 Mass. 603, 608 (1994) (reasonable accommodation of tenant's handicap under Fair Housing Act did not preclude landlord from evicting tenant for drug activity on premises). Further, under the FHA, an accommodation must be made without unnecessary delay and made unless the accommodation imposes an undue financial or administrative burden on the entity to whom the request is made, or the request requires a fundamental alteration in the nature of its program. See U.S. v. California Mobile Home Park Management Co., 29 F.3d 1413, 1416 (9th Cir. 1994), appeal after remand 107 F.3d 1374 (9th Cir. 1997); Hovsons, Inc. v. Township of Brick, 89 F.3d 1096 (3rd Cir. 1996); and 24 C.F.R. § 100.204(a). The Proponent is aware of no fundamental alteration to the

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<sup>3</sup> More information may be found on the Town's website at: <https://www.weymouth.ma.us/elder-services/pages/transportation-services>

Ordinance that would be necessary in order to allow the Proposed Use, and no undue hardship or financial and administrative burden to Weymouth that is presented by this request.

Please let me know if you have any questions or if a meeting would be helpful. I respectfully request that you respond in writing to my request on or before April 24, 2024.

Very truly yours,



Katherine Garrahan

KG:mmm

## Exhibit A



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY**



**U.S. DEPARTMENT OF JUSTICE  
CIVIL RIGHTS DIVISION**

*Washington, D.C.  
November 10, 2016*

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

**STATE AND LOCAL LAND USE LAWS AND PRACTICES AND THE APPLICATION  
OF THE FAIR HOUSING ACT**

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**INTRODUCTION**

The Department of Justice (“DOJ”) and the Department of Housing and Urban Development (“HUD”) are jointly responsible for enforcing the Federal Fair Housing Act (“the Act”),<sup>1</sup> which prohibits discrimination in housing on the basis of race, color, religion, sex, disability, familial status (children under 18 living with a parent or guardian), or national origin.<sup>2</sup> The Act prohibits housing-related policies and practices that exclude or otherwise discriminate against individuals because of protected characteristics.

The regulation of land use and zoning is traditionally reserved to state and local governments, except to the extent that it conflicts with requirements imposed by the Fair Housing Act or other federal laws. This Joint Statement provides an overview of the Fair Housing Act’s requirements relating to state and local land use practices and zoning laws, including conduct related to group homes. It updates and expands upon DOJ’s and HUD’s Joint

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<sup>1</sup> The Fair Housing Act is codified at 42 U.S.C. §§ 3601–19.

<sup>2</sup> The Act uses the term “handicap” instead of “disability.” Both terms have the same legal meaning. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that the definition of “disability” in the Americans with Disabilities Act

Statement on Group Homes, Local Land Use, and the Fair Housing Act, issued on August 18, 1999. The first section of the Joint Statement, Questions 1–6, describes generally the Act’s requirements as they pertain to land use and zoning. The second and third sections, Questions 7–25, discuss more specifically how the Act applies to land use and zoning laws affecting housing for persons with disabilities, including guidance on regulating group homes and the requirement to provide reasonable accommodations. The fourth section, Questions 26–27, addresses HUD’s and DOJ’s enforcement of the Act in the land use and zoning context.

This Joint Statement focuses on the Fair Housing Act, not on other federal civil rights laws that prohibit state and local governments from adopting or implementing land use and zoning practices that discriminate based on a protected characteristic, such as Title II of the Americans with Disabilities Act (“ADA”),<sup>3</sup> Section 504 of the Rehabilitation Act of 1973 (“Section 504”),<sup>4</sup> and Title VI of the Civil Rights Act of 1964.<sup>5</sup> In addition, the Joint Statement does not address a state or local government’s duty to affirmatively further fair housing, even though state and local governments that receive HUD assistance are subject to this duty. For additional information provided by DOJ and HUD regarding these issues, see the list of resources provided in the answer to Question 27.

## **Questions and Answers on the Fair Housing Act and State and Local Land Use Laws and Zoning**

### **1. How does the Fair Housing Act apply to state and local land use and zoning?**

The Fair Housing Act prohibits a broad range of housing practices that discriminate against individuals on the basis of race, color, religion, sex, disability, familial status, or national origin (commonly referred to as protected characteristics). As established by the Supremacy Clause of the U.S. Constitution, federal laws such as the Fair Housing Act take precedence over conflicting state and local laws. The Fair Housing Act thus prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a characteristic protected under the Act. Prohibited practices as defined in the Act include making unavailable or denying housing because of a protected characteristic. Housing includes not only buildings intended for occupancy as residences, but also vacant land that may be developed into residences.

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is drawn almost verbatim “from the definition of ‘handicap’ contained in the Fair Housing Amendments Act of 1988”). This document uses the term “disability,” which is more generally accepted.

<sup>3</sup> 42 U.S.C. §12132.

<sup>4</sup> 29 U.S.C. § 794.

<sup>5</sup> 42 U.S.C. § 2000d.

## **2. What types of land use and zoning laws or practices violate the Fair Housing Act?**

Examples of state and local land use and zoning laws or practices that may violate the Act include:

- Prohibiting or restricting the development of housing based on the belief that the residents will be members of a particular protected class, such as race, disability, or familial status, by, for example, placing a moratorium on the development of multifamily housing because of concerns that the residents will include members of a particular protected class.
- Imposing restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups of unrelated individuals, by, for example, requiring an occupancy permit for persons with disabilities to live in a single-family home while not requiring a permit for other residents of single-family homes.
- Imposing restrictions on housing because of alleged public safety concerns that are based on stereotypes about the residents' or anticipated residents' membership in a protected class, by, for example, requiring a proposed development to provide additional security measures based on a belief that persons of a particular protected class are more likely to engage in criminal activity.
- Enforcing otherwise neutral laws or policies differently because of the residents' protected characteristics, by, for example, citing individuals who are members of a particular protected class for violating code requirements for property upkeep while not citing other residents for similar violations.
- Refusing to provide reasonable accommodations to land use or zoning policies when such accommodations may be necessary to allow persons with disabilities to have an equal opportunity to use and enjoy the housing, by, for example, denying a request to modify a setback requirement so an accessible sidewalk or ramp can be provided for one or more persons with mobility disabilities.

## **3. When does a land use or zoning practice constitute intentional discrimination in violation of the Fair Housing Act?**

Intentional discrimination is also referred to as disparate treatment, meaning that the action treats a person or group of persons differently because of race, color, religion, sex, disability, familial status, or national origin. A land use or zoning practice may be intentionally discriminatory even if there is no personal bias or animus on the part of individual government officials. For example, municipal zoning practices or decisions that reflect acquiescence to community bias may be intentionally discriminatory, even if the officials themselves do not personally share such bias. (See Q&A 5.) Intentional discrimination does not require that the



decision-makers were hostile toward members of a particular protected class. Decisions motivated by a purported desire to benefit a particular group can also violate the Act if they result in differential treatment because of a protected characteristic.

A land use or zoning practice may be discriminatory on its face. For example, a law that requires persons with disabilities to request permits to live in single-family zones while not requiring persons without disabilities to request such permits violates the Act because it treats persons with disabilities differently based on their disability. Even a law that is seemingly neutral will still violate the Act if enacted with discriminatory intent. In that instance, the analysis of whether there is intentional discrimination will be based on a variety of factors, all of which need not be satisfied. These factors include, but are not limited to: (1) the “impact” of the municipal practice, such as whether an ordinance disproportionately impacts minority residents compared to white residents or whether the practice perpetuates segregation in a neighborhood or particular geographic area; (2) the “historical background” of the action, such as whether there is a history of segregation or discriminatory conduct by the municipality; (3) the “specific sequence of events,” such as whether the city adopted an ordinance or took action only after significant, racially-motivated community opposition to a housing development or changed course after learning that a development would include non-white residents; (4) departures from the “normal procedural sequence,” such as whether a municipality deviated from normal application or zoning requirements; (5) “substantive departures,” such as whether the factors usually considered important suggest that a state or local government should have reached a different result; and (6) the “legislative or administrative history,” such as any statements by members of the state or local decision-making body.<sup>6</sup>

#### **4. Can state and local land use and zoning laws or practices violate the Fair Housing Act if the state or locality did not intend to discriminate against persons on a prohibited basis?**

Yes. Even absent a discriminatory intent, state or local governments may be liable under the Act for any land use or zoning law or practice that has an unjustified discriminatory effect because of a protected characteristic. In 2015, the United States Supreme Court affirmed this interpretation of the Act in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*<sup>7</sup> The Court stated that “[t]hese unlawful practices include zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification.”<sup>8</sup>

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<sup>6</sup> *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–68 (1977).

<sup>7</sup> \_\_\_ U.S. \_\_\_, 135 S. Ct. 2507 (2015).

<sup>8</sup> *Id.* at 2521–22.

A land use or zoning practice results in a discriminatory effect if it caused or predictably will cause a disparate impact on a group of persons or if it creates, increases, reinforces, or perpetuates segregated housing patterns because of a protected characteristic. A state or local government still has the opportunity to show that the practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests. These interests must be supported by evidence and may not be hypothetical or speculative. If these interests could not be served by another practice that has a less discriminatory effect, then the practice does not violate the Act. The standard for evaluating housing-related practices with a discriminatory effect are set forth in HUD's Discriminatory Effects Rule, 24 C.F.R. § 100.500.

Examples of land use practices that violate the Fair Housing Act under a discriminatory effects standard include minimum floor space or lot size requirements that increase the size and cost of housing if such an increase has the effect of excluding persons from a locality or neighborhood because of their membership in a protected class, without a legally sufficient justification. Similarly, prohibiting low-income or multifamily housing may have a discriminatory effect on persons because of their membership in a protected class and, if so, would violate the Act absent a legally sufficient justification.

**5. Does a state or local government violate the Fair Housing Act if it considers the fears or prejudices of community members when enacting or applying its zoning or land use laws respecting housing?**

When enacting or applying zoning or land use laws, state and local governments may not act because of the fears, prejudices, stereotypes, or unsubstantiated assumptions that community members may have about current or prospective residents because of the residents' protected characteristics. Doing so violates the Act, even if the officials themselves do not personally share such bias. For example, a city may not deny zoning approval for a low-income housing development that meets all zoning and land use requirements because the development may house residents of a particular protected class or classes whose presence, the community fears, will increase crime and lower property values in the surrounding neighborhood. Similarly, a local government may not block a group home or deny a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities or a particular type of disability. Of course, a city council or zoning board is not bound by everything that is said by every person who speaks at a public hearing. It is the record as a whole that will be determinative.

**6. Can state and local governments violate the Fair Housing Act if they adopt or implement restrictions against children?**

Yes. State and local governments may not impose restrictions on where families with children may reside unless the restrictions are consistent with the “housing for older persons” exemption of the Act. The most common types of housing for older persons that may qualify for this exemption are: (1) housing intended for, and solely occupied by, persons 62 years of age or older; and (2) housing in which 80% of the occupied units have at least one person who is 55 years of age or older that publishes and adheres to policies and procedures demonstrating the intent to house older persons. These types of housing must meet all requirements of the exemption, including complying with HUD regulations applicable to such housing, such as verification procedures regarding the age of the occupants. A state or local government that zones an area to exclude families with children under 18 years of age must continually ensure that housing in that zone meets all requirements of the exemption. If all of the housing in that zone does not continue to meet all such requirements, that state or local government violates the Act.

**Questions and Answers on the Fair Housing Act and  
Local Land Use and Zoning Regulation of Group Homes**

**7. Who qualifies as a person with a disability under the Fair Housing Act?**

The Fair Housing Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term “physical or mental impairment” includes, but is not limited to, diseases and conditions such as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV infection, developmental disabilities, mental illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

The term “major life activity” includes activities such as seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, speaking, and working. This list of major life activities is not exhaustive.

Being regarded as having a disability means that the individual is treated as if he or she has a disability even though the individual may not have an impairment or may not have an impairment that substantially limits one or more major life activities. For example, if a landlord

refuses to rent to a person because the landlord believes the prospective tenant has a disability, then the landlord violates the Act's prohibition on discrimination on the basis of disability, even if the prospective tenant does not actually have a physical or mental impairment that substantially limits one or more major life activities.

Having a record of a disability means the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

## **8. What is a group home within the meaning of the Fair Housing Act?**

The term "group home" does not have a specific legal meaning; land use and zoning officials and the courts, however, have referred to some residences for persons with disabilities as group homes. The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. A household where two or more persons with disabilities choose to live together, as a matter of association, may not be subjected to requirements or conditions that are not imposed on households consisting of persons without disabilities.

In this Statement, the term "group home" refers to a dwelling that is or will be occupied by unrelated persons with disabilities. Sometimes group homes serve individuals with a particular type of disability, and sometimes they serve individuals with a variety of disabilities. Some group homes provide residents with in-home support services of varying types, while others do not. The provision of support services is not required for a group home to be protected under the Fair Housing Act. Group homes, as discussed in this Statement, may be opened by individuals or by organizations, both for-profit and not-for-profit. Sometimes it is the group home operator or developer, rather than the individuals who live or are expected to live in the home, who interacts with a state or local government agency about developing or operating the group home, and sometimes there is no interaction among residents or operators and state or local governments.

In this Statement, the term "group home" includes homes occupied by persons in recovery from alcohol or substance abuse, who are persons with disabilities under the Act. Although a group home for persons in recovery may commonly be called a "sober home," the term does not have a specific legal meaning, and the Act treats persons with disabilities who reside in such homes no differently than persons with disabilities who reside in other types of group homes. Like other group homes, homes for persons in recovery are sometimes operated by individuals or organizations, both for-profit and not-for-profit, and support services or supervision are sometimes, but not always, provided. The Act does not require a person who resides in a home for persons in recovery to have participated in or be currently participating in a

substance abuse treatment program to be considered a person with a disability. The fact that a resident of a group home may currently be illegally using a controlled substance does not deprive the other residents of the protection of the Fair Housing Act.

#### **9. In what ways does the Fair Housing Act apply to group homes?**

The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. State and local governments may not discriminate against persons with disabilities who live in group homes. Persons with disabilities who live in or seek to live in group homes are sometimes subjected to unlawful discrimination in a number of ways, including those discussed in the preceding Section of this Joint Statement. Discrimination may be intentional; for example, a locality might pass an ordinance prohibiting group homes in single-family neighborhoods or prohibiting group homes for persons with certain disabilities. These ordinances are facially discriminatory, in violation of the Act. In addition, as discussed more fully in Q&A 10 below, a state or local government may violate the Act by refusing to grant a reasonable accommodation to its zoning or land use ordinance when the requested accommodation may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling. For example, if a locality refuses to waive an ordinance that limits the number of unrelated persons who may live in a single-family home where such a waiver may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling, the locality violates the Act unless the locality can prove that the waiver would impose an undue financial and administrative burden on the local government or fundamentally alter the essential nature of the locality's zoning scheme. Furthermore, a state or local government may violate the Act by enacting an ordinance that has an unjustified discriminatory effect on persons with disabilities who seek to live in a group home in the community. Unlawful actions concerning group homes are discussed in more detail throughout this Statement.

#### **10. What is a reasonable accommodation under the Fair Housing Act?**

The Fair Housing Act makes it unlawful to refuse to make "reasonable accommodations" to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others may sometimes deny them an equal opportunity to use and enjoy a dwelling.

Even if a zoning ordinance imposes on group homes the same restrictions that it imposes on housing for other groups of unrelated persons, 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. What constitutes a reasonable accommodation is a case-by-case determination based on an individualized assessment. This topic is discussed in detail in Q&As 20–25 and in the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

#### **11. Does the Fair Housing Act protect persons with disabilities who pose a “direct threat” to others?**

The Act does not allow for the exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. Nevertheless, the Act does not protect an individual whose tenancy would constitute a “direct threat” to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others unless the threat or risk to property can be eliminated or significantly reduced by reasonable accommodation. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (for example, current conduct or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate or significantly reduce the direct threat. See Q&A 10 for a general discussion of reasonable accommodations. Consequently, in evaluating an individual’s recent history of overt acts, a state or local government must take into account whether the individual has received intervening treatment or medication that has eliminated or significantly reduced the direct threat (in other words, significant risk of substantial harm). In such a situation, the state or local government may request that the individual show how the circumstances have changed so that he or she no longer poses a direct threat. Any such request must be reasonable and limited to information necessary to assess whether circumstances have changed. Additionally, in such a situation, a state or local government may obtain satisfactory and reasonable assurances that the individual will not pose a direct threat during the tenancy. The state or local government must have reliable, objective evidence that the tenancy of a person with a disability poses a direct threat before excluding him or her from housing on that basis, and, in making that assessment, the state or local government may not ignore evidence showing that the individual’s tenancy would no longer pose a direct threat. Moreover, the fact that one individual may pose a direct threat does not mean that another individual with the same disability or other individuals in a group home may be denied housing.



**12. Can a state or local government enact laws that specifically limit group homes for individuals with specific types of disabilities?**

No. Just as it would be illegal to enact a law for the purpose of excluding or limiting group homes for individuals with disabilities, it is illegal under the Act for local land use and zoning laws to exclude or limit group homes for individuals with specific types of disabilities. For example, a government may not limit group homes for persons with mental illness to certain neighborhoods. The fact that the state or local government complies with the Act with regard to group homes for persons with some types of disabilities will not justify discrimination against individuals with another type of disability, such as mental illness.

**13. Can a state or local government limit the number of individuals who reside in a group home in a residential neighborhood?**

Neutral laws that govern groups of unrelated persons who live together do not violate the Act so long as (1) those laws do not intentionally discriminate against persons on the basis of disability (or other protected class), (2) those laws do not have an unjustified discriminatory effect on the basis of disability (or other protected class), and (3) state and local governments make reasonable accommodations when such accommodations may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling.

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 a certain number of 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 from the city. If that ordinance also prohibits a group home having the same number of persons with disabilities in a certain district or requires it to seek a use permit, the ordinance would violate the Fair Housing Act. The ordinance violates the Act because it treats persons with disabilities less favorably than families and unrelated persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together without violating the Act as long as the restrictions are imposed on all such groups, including a group defined as a family. Thus, if the definition of a family includes up to a certain number of unrelated individuals, an ordinance would not, on its face, violate the Act if a group home for persons with disabilities with more than the permitted number for a family were not allowed to locate in a single-family-zoned neighborhood because any group of unrelated people without disabilities of that number would also be disallowed. A facially neutral ordinance, however, still may violate the Act if it is intentionally discriminatory (that is, enacted with discriminatory intent or applied in a discriminatory manner), or if it has an unjustified

discriminatory effect on persons with disabilities. For example, an ordinance that limits the number of unrelated persons who may constitute a family may violate the Act if it is enacted for the purpose of limiting the number of persons with disabilities who may live in a group home, or if it has the unjustified discriminatory effect of excluding or limiting group homes in the jurisdiction. Governments may also violate the Act if they enforce such restrictions more strictly against group homes than against groups of the same number of unrelated persons without disabilities who live together in housing. In addition, as discussed in detail below, because the Act prohibits the denial of reasonable accommodations to rules and policies for persons with disabilities, a group home that provides housing for a number of persons with disabilities that exceeds the number allowed under the family definition has the right to seek an exception or waiver. If the criteria for a reasonable accommodation are met, the permit must be given in that instance, but the ordinance would not be invalid.<sup>9</sup>

#### **14. How does the Supreme Court's ruling in *Olmstead* apply to the Fair Housing Act?**

In *Olmstead v. L.C.*,<sup>10</sup> the Supreme Court ruled that the Americans with Disabilities Act (ADA) prohibits the unjustified segregation of persons with disabilities in institutional settings where necessary services could reasonably be provided in integrated, community-based settings. An integrated setting is one that enables individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. By contrast, a segregated setting includes congregate settings populated exclusively or primarily by individuals with disabilities. Although *Olmstead* did not interpret the Fair Housing Act, the objectives of the Fair Housing Act and the ADA, as interpreted in *Olmstead*, are consistent. The Fair Housing Act ensures that persons with disabilities have an equal opportunity to choose the housing where they wish to live. The ADA and *Olmstead* ensure that persons with disabilities also have the option to live and receive services in the most integrated setting appropriate to their needs. The integration mandate of the ADA and *Olmstead* can be implemented without impairing the rights protected by the Fair Housing Act. For example, state and local governments that provide or fund housing, health care, or support services must comply with the integration mandate by providing these programs, services, and activities in the most integrated setting appropriate to the needs of individuals with disabilities. State and local governments may comply with this requirement by adopting standards for the housing, health care, or support services they provide or fund that are reasonable, individualized, and specifically tailored to enable individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. Local governments should be aware that ordinances and policies that impose additional restrictions on housing or residential services for persons with disabilities that are not imposed on housing or

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<sup>9</sup> Laws that limit the number of occupants per unit do not violate the Act as long as they are reasonable, are applied to all occupants, and do not operate to discriminate on the basis of disability, familial status, or other characteristics protected by the Act.

<sup>10</sup> 527 U.S. 581 (1999).

residential services for persons without disabilities are likely to violate the Act. In addition, a locality would violate the Act and the integration mandate of the ADA and *Olmstead* if it required group homes to be concentrated in certain areas of the jurisdiction by, for example, restricting them from being located in other areas.

**15. Can a state or local government impose spacing requirements on the location of group homes for persons with disabilities?**

A “spacing” or “dispersal” requirement generally refers to a requirement that a group home for persons with disabilities must not be located within a specific distance of another group home. Sometimes a spacing requirement is designed so it applies only to group homes and sometimes a spacing requirement is framed more generally and applies to group homes and other types of uses such as boarding houses, student housing, or even certain types of businesses. In a community where a certain number of unrelated persons are permitted by local ordinance to reside together in a home, it would violate the Act for the local ordinance to impose a spacing requirement on group homes that do not exceed that permitted number of residents because the spacing requirement would be a condition imposed on persons with disabilities that is not imposed on persons without disabilities. In situations where a group home seeks a reasonable accommodation to exceed the number of unrelated persons who are permitted by local ordinance to reside together, the Fair Housing Act does not prevent state or local governments from taking into account concerns about the over-concentration of group homes that are located in close proximity to each other. Sometimes compliance with the integration mandate of the ADA and *Olmstead* requires government agencies responsible for licensing or providing housing for persons with disabilities to consider the location of other group homes when determining what housing will best meet the needs of the persons being served. Some courts, however, have found that spacing requirements violate the Fair Housing Act because they deny persons with disabilities an equal opportunity to choose where they will live. Because an across-the-board spacing requirement may discriminate against persons with disabilities in some residential areas, any standards that state or local governments adopt should evaluate the location of group homes for persons with disabilities on a case-by-case basis.

Where a jurisdiction has imposed a spacing requirement on the location of group homes for persons with disabilities, courts may analyze whether the requirement violates the Act under an intent, effects, or reasonable accommodation theory. In cases alleging intentional discrimination, courts look to a number of factors, including the effect of the requirement on housing for persons with disabilities; the jurisdiction’s intent behind the spacing requirement; the existence, size, and location of group homes in a given area; and whether there are methods other than a spacing requirement for accomplishing the jurisdiction’s stated purpose. A spacing requirement enacted with discriminatory intent, such as for the purpose of appeasing neighbors’ stereotypical fears about living near persons with disabilities, violates the Act. Further, a neutral

spacing requirement that applies to all housing for groups of unrelated persons may have an unjustified discriminatory effect on persons with disabilities, thus violating the Act. Jurisdictions must also consider, in compliance with the Act, requests for reasonable accommodations to any spacing requirements.

**16. Can a state or local government impose health and safety regulations on group home operators?**

Operators of group homes for persons with disabilities are subject to applicable state and local regulations addressing health and safety concerns unless those regulations are inconsistent with the Fair Housing Act or other federal law. Licensing and other regulatory requirements that may apply to some group homes must also be consistent with the Fair Housing Act. Such regulations must not be based on stereotypes about persons with disabilities or specific types of disabilities. State or local zoning and land use ordinances may not, consistent with the Fair Housing Act, require individuals with disabilities to receive medical, support, or other services or supervision that they do not need or want as a condition for allowing a group home to operate. State and local governments' enforcement of neutral requirements regarding safety, licensing, and other regulatory requirements governing group homes do not violate the Fair Housing Act so long as the ordinances are enforced in a neutral manner, they do not specifically target group homes, and they do not have an unjustified discriminatory effect on persons with disabilities who wish to reside in group homes.

Governments must also consider requests for reasonable accommodations to licensing and regulatory requirements and procedures, and grant them where they may be necessary to afford individuals with disabilities an equal opportunity to use and enjoy a dwelling, as required by the Act.

**17. Can a state or local government address suspected criminal activity or fraud and abuse at group homes for persons with disabilities?**

The Fair Housing Act does not prevent state and local governments from taking nondiscriminatory action in response to criminal activity, insurance fraud, Medicaid fraud, neglect or abuse of residents, or other illegal conduct occurring at group homes, including reporting complaints to the appropriate state or federal regulatory agency. States and localities must ensure that actions to enforce criminal or other laws are not taken to target group homes and are applied equally, regardless of whether the residents of housing are persons with disabilities. For example, persons with disabilities residing in group homes are entitled to the same constitutional protections against unreasonable search and seizure as those without disabilities.

**18. Does the Fair Housing Act permit a state or local government to implement strategies to integrate group homes for persons with disabilities in particular neighborhoods where they are not currently located?**

Yes. Some strategies a state or local government could use to further the integration of group housing for persons with disabilities, consistent with the Act, include affirmative marketing or offering incentives. For example, jurisdictions may engage in affirmative marketing or offer variances to providers of housing for persons with disabilities to locate future homes in neighborhoods where group homes for persons with disabilities are not currently located. But jurisdictions may not offer incentives for a discriminatory purpose or that have an unjustified discriminatory effect because of a protected characteristic.

**19. Can a local government consider the fears or prejudices of neighbors in deciding whether a group home can be located in a particular neighborhood?**

In the same way a local government would violate the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities (see Q&A 5), a local government violates the law if it blocks a group home or denies a reasonable accommodation request because of neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers themselves do not have biases against persons with disabilities.

Not all community opposition to requests by group homes is necessarily discriminatory. For example, when a group home seeks a reasonable accommodation to operate in an area and the area has limited on-street parking to serve existing residents, it is not a violation of the Fair Housing Act for neighbors and local government officials to raise concerns that the group home may create more demand for on-street parking than would a typical family and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the requested accommodation, if a similar dwelling that is not a group home or similarly situated use would ordinarily be denied a permit because of such parking concerns. If, however, the group home shows that the home will not create a need for more parking spaces than other dwellings or similarly-situated uses located nearby, or submits a plan to provide any needed off-street parking, then parking concerns would not support a decision to deny the home a permit.

## **Questions and Answers on the Fair Housing Act and Reasonable Accommodation Requests to Local Zoning and Land Use Laws**

### **20. When does a state or local government violate the Fair Housing Act by failing to grant a request for a reasonable accommodation?**

A state or local government violates the Fair Housing Act by failing to grant a reasonable accommodation request if (1) the persons requesting the accommodation or, in the case of a group home, persons residing in or expected to reside in the group home are persons with a disability under the Act; (2) the state or local government knows or should reasonably be expected to know of their disabilities; (3) an accommodation in the land use or zoning ordinance or other rules, policies, practices, or services of the state or locality was requested by or on behalf of persons with disabilities; (4) the requested accommodation may be necessary to afford one or more persons with a disability an equal opportunity to use and enjoy the dwelling; (5) the state or local government refused to grant, failed to act on, or unreasonably delayed the accommodation request; and (6) the state or local government cannot show that granting the accommodation would impose an undue financial and administrative burden on the local government or that it would fundamentally alter the local government's zoning scheme. A requested accommodation may be necessary if there is an identifiable relationship between the requested accommodation and the group home residents' disability. Further information is provided in Q&A 10 above and the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

### **21. Can a local government deny a group home's request for a reasonable accommodation without violating the Fair Housing Act?**

Yes, a local government may deny a group home's request for a reasonable accommodation if the request was not made by or on behalf of persons with disabilities (by, for example, the group home developer or operator) or if there is no disability-related need for the requested accommodation because there is no relationship between the requested accommodation and the disabilities of the residents or proposed residents.

In addition, a group home's request for a reasonable accommodation may be denied by a local government if providing the accommodation is not reasonable—in other words, if it would impose an undue financial and administrative burden on the local government or it would fundamentally alter the local government's zoning scheme. The determination of undue financial and administrative burden must be decided on a case-by-case basis involving various factors, such as the nature and extent of the administrative burden and the cost of the requested accommodation to the local government, the financial resources of the local government, and the benefits that the accommodation would provide to the persons with disabilities who will reside in the group home.



When a local government refuses an accommodation request because it would pose an undue financial and administrative burden, the local government should discuss with the requester whether there is an alternative accommodation that would effectively address the disability-related needs of the group home's residents without imposing an undue financial and administrative burden. This discussion is called an "interactive process." If an alternative accommodation would effectively meet the disability-related needs of the residents of the group home and is reasonable (that is, it would not impose an undue financial and administrative burden or fundamentally alter the local government's zoning scheme), the local government must grant the alternative accommodation. An interactive process in which the group home and the local government discuss the disability-related need for the requested accommodation and possible alternative accommodations is both required under the Act and helpful to all concerned, because it often results in an effective accommodation for the group home that does not pose an undue financial and administrative burden or fundamental alteration for the local government.

## **22. What is the procedure for requesting a reasonable accommodation?**

The reasonable accommodation must actually be requested by or on behalf of the individuals with disabilities who reside or are expected to reside in the group home. When the request is made, it is not necessary for the specific individuals who would be expected to live in the group home to be identified. The Act does not require that a request be made in a particular manner or at a particular time. The group home does not need to mention the Fair Housing Act or use the words "reasonable accommodation" when making a reasonable accommodation request. The group home must, however, make the request in a manner that a reasonable person would understand to be a disability-related request for an exception, change, or adjustment to a rule, policy, practice, or service. When making a request for an exception, change, or adjustment to a local land use or zoning regulation or policy, the group home should explain what type of accommodation is being requested and, if the need for the accommodation is not readily apparent or known by the local government, explain the relationship between the accommodation and the disabilities of the group home residents.

A request for a reasonable accommodation can be made either orally or in writing. It is often helpful for both the group home and the local government if the reasonable accommodation request is made in writing. This will help prevent misunderstandings regarding what is being requested or whether or when the request was made.

Where a local land use or zoning code contains specific procedures for seeking a departure from the general rule, courts have decided that these procedures should ordinarily be followed. If no procedure is specified, or if the procedure is unreasonably burdensome or intrusive or involves significant delays, a request for a reasonable accommodation may,

nevertheless, be made in some other way, and a local government is obligated to grant it if the requested accommodation meets the criteria discussed in Q&A 20, above.

Whether or not the local land use or zoning code contains a specific procedure for requesting a reasonable accommodation or other exception to a zoning regulation, if local government officials have previously made statements or otherwise indicated that an application for a reasonable accommodation would not receive fair consideration, or if the procedure itself is discriminatory, then persons with disabilities living in a group home, and/or its operator, have the right to file a Fair Housing Act complaint in court to request an order for a reasonable accommodation to the local zoning regulations.

### **23. Does the Fair Housing Act require local governments to adopt formal reasonable accommodation procedures?**

The Act does not require a local government to adopt formal procedures for processing requests for reasonable accommodations to local land use or zoning codes. DOJ and HUD nevertheless strongly encourage local governments to adopt formal procedures for identifying and processing reasonable accommodation requests and provide training for government officials and staff as to application of the procedures. Procedures for reviewing and acting on reasonable accommodation requests will help state and local governments meet their obligations under the Act to respond to reasonable accommodation requests and implement reasonable accommodations promptly. Local governments are also encouraged to ensure that the procedures to request a reasonable accommodation or other exception to local zoning regulations are well known throughout the community by, for example, posting them at a readily accessible location and in a digital format accessible to persons with disabilities on the government's website. If a jurisdiction chooses to adopt formal procedures for reasonable accommodation requests, the procedures cannot be onerous or require information beyond what is necessary to show that the individual has a disability and that the requested accommodation is related to that disability. For example, in most cases, an individual's medical record or detailed information about the nature of a person's disability is not necessary for this inquiry. In addition, officials and staff must be aware that any procedures for requesting a reasonable accommodation must also be flexible to accommodate the needs of the individual making a request, including accepting and considering requests that are not made through the official procedure. The adoption of a reasonable accommodation procedure, however, will not cure a zoning ordinance that treats group homes differently than other residential housing with the same number of unrelated persons.

**24. What if a local government fails to act promptly on a reasonable accommodation request?**

A local government has an obligation to provide prompt responses to reasonable accommodation requests, whether or not a formal reasonable accommodation procedure exists. A local government's undue delay in responding to a reasonable accommodation request may be deemed a failure to provide a reasonable accommodation.

**25. Can a local government enforce its zoning code against a group home that violates the zoning code but has not requested a reasonable accommodation?**

The Fair Housing Act does not prohibit a local government from enforcing its zoning code against a group home that has violated the local zoning code, as long as that code is not discriminatory or enforced in a discriminatory manner. If, however, the group home requests a reasonable accommodation when faced with enforcement by the locality, the locality still must consider the reasonable accommodation request. A request for a reasonable accommodation may be made at any time, so at that point, the local government must consider whether there is a relationship between the disabilities of the residents of the group home and the need for the requested accommodation. If so, the locality must grant the requested accommodation unless doing so would pose a fundamental alteration to the local government's zoning scheme or an undue financial and administrative burden to the local government.

**Questions and Answers on Fair Housing Act Enforcement of  
Complaints Involving Land Use and Zoning**

**26. How are Fair Housing Act complaints involving state and local land use laws and practices handled by HUD and DOJ?**

The Act gives HUD the power to receive, investigate, and conciliate complaints of discrimination, including complaints that a state or local government has discriminated in exercising its land use and zoning powers. HUD may not issue a charge of discrimination pertaining to "the legality of any State or local zoning or other land use law or ordinance." Rather, after investigating, HUD refers matters it believes may be meritorious to DOJ, which, in its discretion, may decide to bring suit against the state or locality within 18 months after the practice at issue occurred or terminated. DOJ may also bring suit by exercising its authority 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.

If HUD determines that there is no reasonable cause to believe that there may be a violation, it will close an investigation without referring the matter to DOJ. But a HUD or DOJ

decision not to proceed with a land use or zoning 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 DOJ encourage parties to land use disputes to explore reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation or conciliation of the HUD complaint. HUD attempts to conciliate all complaints under the Act that it receives, including those involving land use or zoning laws. In addition, it is DOJ's policy to offer prospective state or local governments the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

## **27. How can I find more information?**

For more information on reasonable accommodations and reasonable modifications under the Fair Housing Act:

- HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act, *available at* <https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0> or <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.
- HUD/DOJ Joint Statement on Reasonable Modifications under the Fair Housing Act, *available at* <https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0> or [http://www.hud.gov/offices/fheo/disabilities/reasonable\\_modifications\\_mar08.pdf](http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf).

For more information on state and local governments' obligations under Section 504:

- HUD website at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/disabilities/sect504](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504).

For more information on state and local governments' obligations under the ADA and *Olmstead*:

- U.S. Department of Justice website, [www.ADA.gov](http://www.ADA.gov), or call the ADA information line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).
- Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*, *available at* [http://www.ada.gov/olmstead/q&a\\_olmstead.htm](http://www.ada.gov/olmstead/q&a_olmstead.htm).
- Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead*, *available at* <http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>.

For more information on the requirement to affirmatively further fair housing:

- Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015) (to be codified at 24 C.F.R. pts. 5, 91, 92, 570, 574, 576, and 903).
- U.S. Department of Housing and Urban Development, Version 1, Affirmatively Furthering Fair Housing Rule Guidebook (2015), *available at* <https://www.hudexchange.info/resources/documents/AFFH-Rule-Guidebook.pdf>.
- Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Vol. 1, Fair Housing Planning Guide (1996), *available at* <http://www.hud.gov/offices/fheo/images/fhpg.pdf>.

For more information on nuisance and crime-free ordinances:

- Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services (Sept. 13, 2016), *available at* <http://portal.hud.gov/hudportal/documents/huddoc?id=FinalNuisanceOrdGdnce.pdf>.

## Exhibit B





U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-2000

ASSISTANT SECRETARY FOR  
FAIR HOUSING AND EQUAL OPPORTUNITY

February 11, 2021

MEMORANDUM FOR: Office of Fair Housing & Equal Opportunity  
Fair Housing Assistance Program Agencies  
Fair Housing Initiatives Program Grantees

*Jeanine Worden*

FROM: Jeanine M. Worden, Acting Assistant Secretary for Fair Housing & Equal Opportunity

SUBJECT: Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act

On January 20, 2021, President Biden issued [Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation](#). The Executive Order addresses the Supreme Court's recent decision in *Bostock v Clayton County*, which held that the prohibitions against sex discrimination in the workplace contained in Title VII of the Civil Rights Act of 1964 extend to and include discrimination on the basis of sexual orientation and gender identity. Relying on this landmark decision, the Executive Order directs every federal agency to assess all agency actions taken under federal statutes that prohibit sex discrimination and to fully enforce those statutes to combat discrimination based on sexual orientation and gender identity. HUD's Office of General Counsel has concluded that the Fair Housing Act's sex discrimination provisions are comparable to those of Title VII and that they likewise prohibit discrimination because of sexual orientation and gender identity. Therefore, I am directing HUD's Office of Fair Housing and Equal Opportunity (FHEO) to take the actions outlined in this memo to administer and fully enforce the Fair Housing Act to prohibit discrimination because of sexual orientation and gender identity.

At the core of this Department's housing mission is an endeavor to ensure that all people peacefully enjoy a place they call home, where they are safe and can thrive, free from discrimination and fear. Yet, this ideal remains unrealized for lesbian, gay, bisexual, transgender, and queer-identifying persons, who have been denied the constitutional promise of equal protection under the law throughout most of American history. Courts and governments have routinely withheld legal legitimacy from loving couples because of their sex and denied many persons the freedom to express a gender that defies norms. These injustices have perpetuated across our civic institutions: the workplace, the marketplace, places of education, and many others. But among the most personal and fundamental of these institutions is housing, where, when granted the protection of fair housing law, we all can enjoy the happiness and freedom to love whom we choose and to safely express who we are.

We know this discrimination is real and urgently requires enforcement action. HUD-funded housing discrimination studies indicate that same-sex couples and transgender persons in

communities across the country experience demonstrably less favorable treatment than their straight and cisgender counterparts when seeking rental housing.

Over the past 10 years, the Department has sought to address housing discrimination on the basis of sexual orientation and gender identity to the extent possible in a dynamic public policy and legal landscape. Beginning in 2012, HUD promulgated a series of rules to ensure that every person has equal access to HUD programs without being arbitrarily excluded, regardless of their sexual orientation, gender identity, or marital status. In its 2016 harassment rule, HUD reaffirmed its legal interpretation that the Fair Housing Act's protection from discrimination because of sex included discrimination because of gender identity. Also in 2016, FHEO instructed regional offices that discrimination because of real or perceived gender identity is sex discrimination under the Fair Housing Act, and that discrimination against persons because of sexual orientation may be sex-based discrimination when motivated by perceived nonconformity with gender stereotypes.

This limited enforcement of the Fair Housing Act's sex discrimination prohibition, while a step forward, is insufficient to satisfy the Act's purpose of providing fair housing throughout the United States to the full extent permitted by the United States Constitution. It is also inconsistent with the Supreme Court's interpretation of discrimination because of sex under *Bostock*, and it fails to fully enforce the provisions of the Fair Housing Act to combat discrimination on the basis of sexual orientation and gender identity in accordance with Executive Order 13988. For these reasons, I have determined that the following actions are necessary.

Effective immediately, FHEO shall accept for filing and investigate all complaints of sex discrimination, including discrimination because of gender identity or sexual orientation, that meet other jurisdictional requirements. Where reasonable cause exists to believe that discrimination because of sexual orientation or gender identity has occurred, FHEO will refer a determination of cause for charge by HUD's Office of General Counsel. Moreover, if discrimination because of gender identity or sexual orientation occurs in conjunction with discrimination because of another protected characteristic, all such bases shall be included within the complaint, investigated, and charged where reasonable cause exists. Similarly, FHEO shall conduct all other activities involving the application, interpretation, and enforcement of the Fair Housing Act's prohibition on sex discrimination to include discrimination because of sexual orientation and gender identity.

This memorandum also affects state and local agencies that enter into agreements with the Department under the Fair Housing Assistance Program (FHAP), pursuant to which such agencies process discrimination complaints under laws that the Department certifies as "substantially equivalent" to the Fair Housing Act. In order for FHAP agencies' laws to remain substantially equivalent, they must be administered consistent with *Bostock*. To be consistent with *Bostock*, the state or local law either must explicitly prohibit discrimination because of gender identity and sexual orientation or must include prohibitions on sex discrimination that are interpreted and applied to include discrimination because of gender identity and sexual orientation. HUD will provide further instruction and technical assistance to FHAP agencies on the implementation of *Bostock*.

Similarly, organizations and agencies that receive grants through HUD's Fair Housing Initiative Program (FHIP), in carrying out activities under these grant agreements, must interpret sex

discrimination under the Fair Housing Act to include discrimination because of sexual orientation and gender identity. FHIP provides funds to public and private not-for-profit entities to conduct various activities to prevent or eliminate discriminatory housing practices. These activities provide important support to the full enforcement of the Fair Housing Act by informing the public about fair housing rights and obligations; detecting discriminatory conduct through investigation and testing; and assisting persons to file complaints and obtain relief through legal and administrative forums. HUD will provide further instruction and technical assistance to FHIP organizations on the implementation of this order.

In accordance with this directive to fully enforce the Fair Housing Act's prohibitions against discrimination because of sex, including sexual orientation and gender identity, FHEO Regional Offices, FHAP agencies and FHIP grantees are instructed to review, within 30 days, all records of allegations of discrimination (inquiries, complaints, phone logs, etc.) received since January 20, 2020. They are instructed to notify persons who alleged discrimination because of gender identity or sexual orientation that their claims may be timely and jurisdictional for filing.

The Department is committed to delivering the full promise of the Fair Housing Act. Our FHEO offices across the country are open and ready to assist persons who believe they have experienced discrimination because of sexual orientation or gender identity. We will collaborate with our FHIP and FHAP partners, particularly over the next several months, to fully engage our fair housing enforcement, advocacy, and public education efforts across the housing market to prevent and combat discrimination because of sexual orientation and gender identity. I am deeply proud of the Department's commitment to fair housing and the enormous contribution our FHIP and FHAP partnerships bring to the nation's fair housing mission. Together, I know we will forge a path to the eradication of housing discrimination for all.

## Exhibit C



## Alzheimer's Disease and Healthy Aging

[Alzheimer's Disease and Healthy Aging Home](#)

# Loneliness and Social Isolation Linked to Serious Health Conditions



Social isolation was associated with about a 50% increased risk of dementia and other serious medical conditions.

Loneliness and social isolation in older adults are serious public health risks affecting a significant number of people in the United States and putting them at risk for dementia and other serious medical conditions.

A [report](#) from the National Academies of Sciences, Engineering, and Medicine (NASEM) points out that more than one-third of adults aged 45 and older feel lonely, and nearly one-fourth of adults aged 65 and older are considered to be socially isolated.<sup>1</sup> Older adults are at increased risk for loneliness and social isolation because they are more likely to face factors such as living alone, the loss of family or friends, chronic illness, and hearing loss.

Loneliness is the feeling of being alone, regardless of the amount of social contact. Social isolation is a lack of social connections. Social isolation can lead to loneliness in some people, while others can feel lonely without being socially isolated.

## Health Risks of Loneliness

Although it's hard to measure social isolation and loneliness precisely, there is strong evidence that many adults aged 50 and older are socially isolated or lonely in ways that put their health at risk. Recent studies found that:

- Social isolation significantly increased a person's risk of premature death from all causes, a risk that may rival those of smoking, obesity, and physical inactivity.<sup>1</sup>
- Social isolation was associated with about a 50% increased risk of dementia.<sup>1</sup>
- Poor social relationships (characterized by social isolation or loneliness) was associated with a 29% increased risk of heart disease and a 32% increased risk of stroke.<sup>1</sup>
- Loneliness was associated with higher rates of depression, anxiety, and suicide.
- Loneliness among heart failure patients was associated with a nearly 4 times increased risk of death, 68% increased risk of hospitalization, and 57% increased risk of emergency department visits.<sup>1</sup>


## Immigrant, LGBT People Are at Higher Risk


The report highlights loneliness among vulnerable older adults, including immigrants; lesbian, gay, bisexual, and transgender (LGBT) populations; minorities; and victims of elder abuse. It also points out that the literature base for these populations is sparse and more research is needed to determine risks, impacts, and appropriate actions needed.


Current research suggests that immigrant, and lesbian, gay, bisexual populations experience loneliness more often than other groups. Latino immigrants, for example, "have fewer social ties and lower levels of social integration than US-born Latinos." First-generation immigrants experience stressors that can increase their social isolation, such as language barriers, differences in community, family dynamics, and new relationships that lack depth or history, the report states. Similarly, gay, lesbian, and bisexual populations tend to have more loneliness than their heterosexual peers because of stigma, discrimination, and barriers to care.


## What Can You Do If You Are Experiencing Loneliness?


Your doctor can assess your risk for loneliness and social isolation and get you connected to community resources for help, if needed. The following national organizations also offer helpful resources:

[AARP](#)  —Provides helpful information to seniors to help improve quality of life and provides access to Community Connection Tools.

[Area Agencies on Aging](#)  (AAA)—A network of over 620 organizations across America that provides information and assistance with programs including nutrition and meal programs (counseling and home-delivered or group meals), caregiver support, and more. The website can help you find your local AAA, which may provide classes in Tai Chi and diabetes self-management.

[Eldercare Locator](#)  —A free national service that helps find local resources for seniors such as financial support, caregiving services, and transportation. It includes a brochure that shows how volunteering can help keep you socially connected.

[National Council on Aging](#)  —Works with nonprofit organizations, governments, and businesses to provide community programs and services. This is the place to find what senior programs are available to assist with healthy aging and financial security, including the Aging Mastery Program® that is shown to increase social connectedness and healthy eating habits.

[National Institute on Aging \(NIA\)](#)  — Provides materials on social isolation and loneliness for older adults, caregivers, and health care providers. Materials include health information, a print publication available to view or order no-cost paper copies, a health care provider flyer, and social media graphics and posts.

# Health Care System Interventions Are Key


People generally are social by nature, and high-quality social relationships can help them live longer, healthier lives. Health care systems are an important, yet underused, partner in identifying loneliness and preventing medical conditions associated with loneliness.

Nearly all adults aged 50 or older interact with the health care system in some way. For those without social connections, a doctor's appointment or visit from a home health nurse may be one of the few face-to-face encounters they have. This represents a unique opportunity for clinicians to identify people at risk for loneliness or social isolation.

NASEM recommends that clinicians periodically assess patients who may be at risk and connect them to community resources for help. In clinical settings, NASEM recommends using the Berkman-Syme Social Network Index (for measuring social isolation) and the three-item UCLA Loneliness Scale (for measuring loneliness).

But patients must make their own decisions. Some people may like being alone. It is also important to note that social isolation and loneliness are two distinct aspects of social relationships, and they are not significantly linked. Both can put health at risk, however.

## Reference

<sup>1</sup> National Academies of Sciences, Engineering, and Medicine. 2020. *Social Isolation and Loneliness in Older Adults: Opportunities for the Health Care System*. Washington, DC: The National Academies Press.  
<https://doi.org/10.17226/25663> .

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