

The Law is On Your Side: Housing for People with Behavioral Health Needs

California Behavioral Health Policy Forum
February 18, 2016

Pamela Cohen, Staff Attorney
Disability Rights California

pamela.cohen@disabilityrightsca.org

This presentation is for informational purposes only. It is not legal advice and does not create an attorney-client relationship.

Overview of Presentations



1. Overview of Housing Rights for People with Behavioral Health Needs

Pamela Cohen, Disability Rights California

2. County Strategies for Addressing Siting Concerns

Maria Funk, Los Angeles County DMH

3. Advocacy Strategies for Overcoming Impediments to Housing

Kim Savage, Law Offices of Kim Savage

Types of Housing Rights



1. [Rights in Licensed Facilities]
2. Fair Housing Rights
3. Zoning and Land-Use Rights

Fair Housing Rights



Protection:

State and federal law prohibit discrimination against people with disabilities in the sale or rental of real estate by landlords, sellers, realtors and mortgage lenders

- Refusing to rent or sell housing
- Refusing to provide mortgage or realtor services
- Making discriminatory statements to tenant, buyer or applicant
- Refusing to make reasonable accommodations in rules, policies or practices
- Refusing to make reasonable modifications to dwelling

Person with a Disability:

- Physical or mental impairment which [substantially] limits a major life activity or major bodily function;
- Record of such impairment, or
- Regarded as having such an impairment

Fair Housing Statutes

Federal

- Fair Housing Amendments Act (FHAA)
42 U.S.C § 3601 et seq.
- Section 504 of the Rehabilitation Act of 1973
29 U.S.C § 794
- Housing receiving federal funds

California

Fair Employment & Housing Act (FEHA)
Cal. Gov. Code Sec. 12940, et seq.

The Reasonable Accommodations DANCE

D: The individual must have a Disability covered by discrimination laws.

A: The individual must request the Accommodation – no “magic words” are necessary.

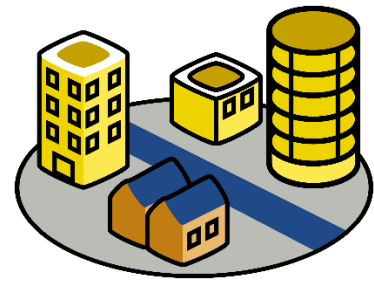
N: The accommodation must be Necessary - there must be a Nexus between the disability and the accommodations.

C: The Cost of the accommodation cannot impose an undue burden on the party providing the accommodation.

E: The Effect of the accommodation cannot be a fundamental change to the program or service provided.

Land-Use and Zoning Rights

Land-Use 101



Purposes of Zoning:

- Identify important issues (new growth, housing needs, environmental protection, community opposition to housing for people with disabilities)
- Project demand for future services (sewer, water, roads)
- Establish goals and policies for redirecting & managing growth

Property Use through Land-Use & Zoning Ordinances:

- By right
- By permit, e.g. Conditional Use Permit (CUP)
- By variance
- By re-zoning

Land-Use and Zoning Rights

Supportive Housing

Housing with no limit on length of stay, that is occupied by the target population, and that is linked to onsite or offsite services that assist the resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

Government Code §65583(a)(2)(f)

Land-Use and Zoning Rights Senate Bill 2 (2008)

Zoning codes must treat transitional and supportive housing as a residential use of property, and subject them only to those restrictions that apply to other residential dwellings of the same type in the same zone.

Government Code §65583(a)(5)

Land-Use and Zoning Rights Opportunities for Public Participation

California General Plan – Housing Element

- Assess housing needs, including for people with disabilities
- Identify resources and restraints
- Determine goals, policies & objectives
- Prepare action programs

Consolidated Plan – Federally-Subsidized Housing

- Similar to Housing Element
- HUD Certification to Affirmatively Further Fair Housing

Siting Issues

“Not In My Backyard”

- Actions by Neighbors
 - Intimidations, Threats, Harassment & Coercion by Neighbors
 - Neighbor Buy-Outs
- Actions by Local Government
 - Siting Barriers
 - Restrictions on # Unrelated People Living Together
 - Spatial Separation and “Over-Concentration” Restrictions
 - Pretextual “Health and Safety” Restrictions
 - Refusal to Fund

Siting Issues

State Law

California Constitution –Article I

Grants all people “inalienable rights,” including enjoying life and liberty, possessing property, and pursuing and obtaining happiness and privacy. Prohibits a city ordinance regulating the number of unrelated people who can live together in one home. (*Santa Barbara v. Adamson* (1980) 27 Cal.3d 123.)

The Housing Accountability Act (Gov’t Code § 65583)

Prohibits jurisdictions from disapproving a proposed housing development, or imposing conditions on approval that make the development infeasible, unless it makes one of five specific written findings based on substantial evidence in the record.

Fair Employment and Housing Act (Gov’t Code § 12900 et seq.)

Prohibits disability-based discrimination in land use and planning activities

Siting Issues

State Law, Cont.

Government Code § 11135

prohibits disability-based discrimination by the state government and by entities receiving state funding

Government Code § 65008

Provides that any planning and zoning action taken by a city is void if it denies to any individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use on the basis of certain factors, including disability.

Code of Civil Procedure § 1085

Allows private parties to bring a writ of mandate under to challenge the adequacy of a housing element, or to enforce the program actions set forth in the element.

Siting Issues Federal Law

U.S. Constitution -14th Amendment

Prohibits zoning ordinances that treat people with disabilities differently than other groups, unless the ordinances are rationally related to a legitimate governmental purpose

Fair Housing Amendments Act of 1988 (42 U.S.C § 3601 et seq.)
Section 504 of the Rehabilitation Act of 1973 (29 U.S.C § 794)

Prohibit discriminatory land-use and zoning ordinances and practices

Title II of the Americans with Disabilities Act of 1990 (42 U.S.C § 12101 et seq.)

Prohibits disability discrimination by a public entity, including discriminatory land use practices and unnecessary institutionalization

ADA Integration Mandate

Americans with Disabilities Act, 42 U.S.C § 12132:

No qualified individual with a disability shall be subject to disability discrimination by a public entity, or be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity because of a disability.

ADA Integration Regulation, 28 C.F.R. § 35.130(d)

States must administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

ADA Integration Mandate, Cont.

Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581 (1999)

Public benefits must be used to serve people with disabilities in the community when:

- (1) the state's treatment professionals have determined that community placement is appropriate;
- (2) community placement is not opposed by the individual; and
- (3) "the placement can be reasonably accommodated, taking into account the resources available" and the needs of others with disabilities.

Administrative & Legal Remedies

California Department of Fair Employment and Housing (DFEH)

(800) 233-3212

www.dfeh.ca.gov

Deadline: One Year

U.S. Department of Housing and Urban Development (HUD)

(800) 669-9777

www.hud.gov

Deadlines: FHAA = One Year; Section 504 = 180 Days

State or Federal lawsuit

Deadline: Two Years

More Information

For more information and extensive resources:

Disability Rights California, *Everyone's Neighborhood: Addressing "Not in My Backyard" Opposition to Supportive Housing for People with Mental Health Disabilities* (Pub #CM53.01)

<http://www.disabilityrightsca.org/CalMHSA/CalMHSAPolicy.html>