



State of California
Office of the Attorney General

ROB BONTA
ATTORNEY GENERAL

June 14, 2022

To: All Cities and Counties in California

RE: Addressing Land Use and Zoning Barriers to Fair Housing for People with Disabilities

Dear Colleague:

Discriminatory local land use and zoning processes continue to create significant barriers to housing opportunities for Californians with disabilities. These continuing problems have been documented in, for example, the California Department of Housing and Community Development (HCD)'s Final 2020 Analysis of Impediments to Fair Housing Choice,¹ where stakeholders identified problematic local land use and zoning restrictions among the factors imposing barriers to housing choice for people with disabilities.² People with disabilities are highly likely to experience the “worst case” housing needs.³ They often experience difficulties finding suitable housing at a reasonable cost because of reduced employment options,⁴ shortages of housing with accessibility features designed to accommodate the needs of people with sensory and mobility disabilities,⁵ and discrimination.⁶

¹ Cal. Dept. of Housing and Community Development (HCD), *Final 2020 Analysis of Impediments to Fair Housing Choice* (June 2020) <<https://www.hcd.ca.gov/policy-research/plans-reports/docs/final2020ai.pdf>> (as of May 20, 2022).

² *Ibid.* Other factors included a general lack of compliant and accessible units, market forces, and community pushback against the construction or preservation of existing accessible units.

³ “Worst case” housing need is defined as having very low income while not receiving housing assistance and paying more than half of household income for rent, living in severely inadequate conditions, or both. U.S. Dept. of Housing and Urban Development (HUD), *Worst Case Housing Needs: 2021 Report to Congress* (July 2021) <<https://www.huduser.gov/portal/sites/default/files/pdf/Worst-Case-Housing-Needs-2021.pdf>> (as of May 23, 2022).

⁴ *Ibid.*

⁵ White, *Nowhere to Go: The Housing Crisis Facing Americans With Disabilities*, The Atlantic (Dec. 15, 2015) <<https://www.theatlantic.com/business/archive/2015/12/renting-with-a-disability/420555/>> (as of May 20, 2022) (noting that only 1% of all U.S. rental housing has all five basic accessibility features, which include a step-free entry, a single floor layout, and wide doors and hallways).

⁶ See, e.g., Nat. Fair Housing Alliance, *Making Every Neighborhood a Place of Opportunity: 2018 Fair Housing Trends Report* (2018) <<https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report.pdf>> (as of May 20, 2022).

The State of California, including the Department of Justice, is actively committed to promoting fair housing choice for people with disabilities, including by promulgating and enforcing relevant state laws governing local jurisdictions' exercise of their land use and zoning powers. To ensure your jurisdiction's ongoing compliance with these critical protections, I urge you to review and update your land use and zoning laws, policies, and practices for compliance with state and federal laws. I further urge you to adopt and implement a reasonable accommodations process related to, but separate from, your land use and zoning processes if your jurisdiction has not already done so, and make its availability known throughout your communities.⁷

Local jurisdictions' land use and zoning actions are subject to the California Fair Employment and Housing Act (FEHA, Gov. Code, § 12900 et seq.), its federal counterpart the Fair Housing Amendments Act (FHAA, 42 U.S.C. § 3601 et seq.), and the California Planning and Zoning Law (Gov. Code, § 65000 et seq.), among other laws. Title II of the Americans with Disabilities Act (ADA, 42 U.S.C. § 12131 et seq.) and Section 504 of the Rehabilitation Act (29 U.S.C. § 794) have also been found to apply to zoning ordinances and require local jurisdictions to make reasonable accommodations to their requirements under certain circumstances. (*Bay Area Addiction Research v. City of Antioch* (9th Cir. 1999) 179 F.3d 725, 730-732; see also 28 C.F.R. § 35.130(b)(7).)

The FEHA and the FHAA prohibit cities, counties, or other local governmental agencies from adopting and implementing land use and zoning laws, policies and practices that discriminate based on disability. (42 U.S.C. § 3604(f)(3)(B); see also Gov. Code, §§ 12927, subd. (c)(1), 12955, subd. (1).) The FEHA and the FHAA further impose an affirmative duty on local jurisdictions to make reasonable accommodations (i.e., changes or exceptions) to their zoning laws and other land use regulations and practices where necessary to provide people with disabilities equal opportunity in housing.⁸ (42 U.S.C. § 3604(f)(3)(B); see also Gov. Code, §§ 12927, subd. (c)(1), 12955, subd. (1); Cal. Code Regs., tit. 2, §§ 12161-12162; see, e.g., *Gamble v. City of Escondido* (9th Cir. 1997) 104 F.3d 300, 307 [FHAA affirmatively required city to make reasonable accommodations for residences for people with disabilities]; *Turning Point, Inc. v. City of Caldwell* (9th Cir. 1996) 74 F.3d 941, 945 [municipality's refusal to make reasonable accommodations in its rules when such accommodations may be necessary to afford persons with disabilities equal opportunity for housing violated FHAA]; *City of Edmonds v. Wash. St. Bldg. Code Council* (9th Cir. 1994) 18 F.3d 802, 806, *aff'd sub nom. City of Edmonds v. Oxford House, Inc.* (1995) 514 U.S. 725 (*City of Edmonds*) ["The FHAA imposes an affirmative duty to reasonably accommodate handicapped persons"].)

⁷ In 2001, our office sent a letter urging local jurisdictions to adopt a reasonable accommodations process related to zoning actions. (California Attorney General Bill Lockyer, Letter to All California Mayors, May 15, 2001.)

⁸ U.S. Dept. of J. (U.S. DOJ) and HUD, *Joint Statement, State and Local Land Use Laws and Practices and the Application of the Fair Housing Act* (Nov. 10, 2016) <<https://www.justice.gov/crt/page/file/909956/download>> (as of May 20, 2022).

The California Planning and Zoning Law requires a local jurisdiction to prepare a Housing Element as part of its General Plan. (Gov. Code, § 65302, subd. (c).) The law also prohibits discrimination against affordable housing developments, affordable housing developers, and potential residents by local jurisdictions when carrying out their planning and zoning powers. (Gov. Code, § 65583.) A local jurisdiction's Housing Element must analyze the housing needs of people with disabilities and potential governmental constraints to the development, improvement, and maintenance of housing for people with disabilities; demonstrate local efforts to remove any such constraints; and provide reasonable accommodations for persons with disabilities through programs that remove constraints. (Gov. Code, §§ 65008, 65300, 65583, subd. (c)(3).)

As part of this process, a local jurisdiction must review its land use and zoning policies and procedures to ensure that they:

- Comply with fair housing laws;
- Include a provision for group homes with more than six residents, specifically for people with disabilities, other than those residential zones covered by state law;
- Include a broadened definition of “family” that 1) provides zoning code occupancy standards specific to unrelated adults and 2) complies with fair housing law;
- Evaluate any siting or separation requirements for licensed residential-care facilities to determine the extent to which the local restrictions affect the development and cost of housing;
- Ensure that any minimum distance requirements in the land use element for the siting of special needs housing developments do not impact the development and cost of housing for persons with disabilities; and
- Include alternate residential parking requirements, including reduction, for people with disabilities.⁹

A local jurisdiction must further determine whether it has an established reasonable accommodation procedure, and evaluate that policy to describe:

- The process for requesting a reasonable accommodation retrofit (e.g., a request to build a ramp), and
- The extent to which existing requirements constrain or facilitate the application of:
 - An existing or proposed reasonable accommodation procedure (e.g., as related to permit processing, zoning, building codes, and procedures for the approval of licensed residential-care facilities) and

⁹ HCD, *Building Blocks* <<https://www.hcd.ca.gov/community-development/building-blocks/constraints/constraints-for-people-with-disabilities.shtml>> (as of May 20, 2022).

- Physical accessibility efforts in compliance with the FHAA, the ADA, and federal and state laws and access standards (e.g., retrofit efforts or other measures that provide disability access).¹⁰

Any reasonable accommodation procedure that your jurisdiction uses should operate promptly and efficiently to ensure that people with disabilities have access to affordable, accessible housing options. The reasonable accommodation procedure should also be independent of existing variance and conditional permit procedures. Several considerations counsel against a local jurisdiction's reliance on such procedures to process reasonable accommodation requests.

First, the criteria for determining whether to grant a variance or conditional use permit differ from those that govern reasonable accommodation requests within the meaning of fair housing laws. Municipalities relying on these land-use-oriented procedures to process reasonable accommodation requests risk wrongful denial of projects in violation of fair housing laws. (See *City of Edmonds, supra*, 18 F.3d at pp. 805-806 [noting that enforcement of otherwise neutral rules on health, safety, and land use may discriminate against people with disabilities].) Not only would this violate the affected people with disabilities' housing rights, it would expose the jurisdiction to liability for monetary damages, penalties, and attorneys' fees and costs under state and federal fair housing laws.

Further, reliance on these alternative procedures, with their different governing criteria, serves at least in some circumstances to encourage community opposition to projects involving desperately needed housing for people with disabilities. Opposition to such housing is often based on fears, generalizations, stereotypes, and myths about decreases in property values. While these concerns are largely unfounded,¹¹ they persist nevertheless. The typical variance or conditional use permit process relies on a general "health, safety and welfare" standard which invites opposition based on these fears and stereotypes. In contrast, the reasonable accommodation process evaluates whether a zoning policy change or exception is necessary to make housing accessible for people with disabilities

Ensuring that local jurisdictions' land use and zoning processes comply with state and federal disability rights laws is critical to promote equal housing opportunities for Californians with disabilities. Thank you for your time in reviewing this letter, and your anticipated effort to review your land use and zoning processes to analyze constraints for people with disabilities, and

¹⁰ *Ibid.* For further information regarding accessibility requirements for people with disabilities, please see "Accessible Design Standards for People with Disabilities," Attorney General Rob Bonta, letter to all city and county building officials in California, June 14, 2022.

¹¹ For example, studies across the country have revealed a steady *rise* in property values for homes surrounding supportive housing for people with disabilities. (See, e.g., Furman Center for Real Estate and Urban Policy, *Policy Brief on the Impact of Supportive Housing on Surrounding Neighborhoods: Evidence from New York City* (2008) p. 6 <https://furmancenter.org/files/FurmanCenterPolicyBriefonSupportiveHousing_LowRes.pdf> (as of May 20, 2022); Galster, et al., *The Impacts of Supportive Housing on Neighborhoods and Neighbors* (Oct. 1999) p. xii <https://www.huduser.gov/publications/pdf/support_1.pdf> (as of May 20, 2022).)

to amend them as necessary to include a reasonable accommodations procedure. HCD provides a sample analysis and an example of a reasonable accommodation ordinance from a jurisdiction which has already taken this step that can serve as a model for your jurisdiction.¹² If you have any questions or comments, please feel free to contact Michael L. Newman, the Senior Assistant Attorney General for the Civil Rights Enforcement Section, which includes the Department of Justice's Disability Rights Bureau. Mr. Newman may be reached at Michael.Newman@doj.ca.gov.

Sincerely,



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¹² See footnote 9, *ante*, HCD.