

ISSUES OUTLINE

FAQs REGARDING GROUP HOMES AND CITY OF NORMANDY PARK REGULATION

WHY DOESN'T THE CITY ENFORCE ITS ZONING LIMITATION ON THE NUMBER OF UNRELATED INDIVIDUALS (2) THAT CAN LIVE IN A RESIDENCE IN NORMANDY PARK?

The City is prohibited by the Federal Fair Housing Act Amendments from discriminating against the disabled. The State of Washington requires the City to accept adult family homes in every residential and commercial zone of the City [RCW 70.128.140(2)]. Therefore, the City cannot limit the number of disabled persons living in the home to fewer than eight plus the caregiver and their family without violating the anti-discriminatory provisions of federal law. *Children's Alliance vs. City of Bellevue*, 950 F. Supp. 1491(W.D. Wash. 1997).

THIS IS A COMMERCIAL ENTERPRISE. WHY IS THE CITY PERMITTING IT IN A RESIDENTIAL NEIGHBORHOOD?

Adult family homes are commercial enterprises too. Again, because the State of Washington requires that the City accept them in adult family homes and residential neighborhoods, the City could not prohibit group homes for the disabled based on their commercial nature without discriminating between persons with disability or on the basis of age. *Children's Alliance*; RCW 70.128.140(2).

WHY DOESN'T THE CITY REQUIRE A CONDITIONAL OR SPECIAL USE PERMIT AND TAKE A LOOK AT EACH GROUP HOME INDIVIDUALLY?

The State of Washington has established rights for the disabled which are far broader than federal rights. Under the Washington Housing Policy Act the City cannot by ordinance or regulation "treat a residential structure occupied by persons with disabilities different from a residential structure occupied by a family or other unrelated individuals." RCW 43.185B.005(2)(e). The Act specifically refers to limits placed by "ordinance, development regulation, zoning regulation or official control, policy, or administrative practice . . ." The Washington Court of Appeals used this statute to strike down both the application of a special use permit and home occupancy regulations on a group home. *Sunderlund Family Treatment Services vs. City of Pasco*, 107 Wash.App. 109, 26 P.3d 955 (2001).

WHAT OTHER OPTIONS DOES THE CITY HAVE TO REGULATE?

Based on the statutes and an interpretive case law, the City may not:

1. limit siting based on the delivery of personal care services.

2. distinguish families from consensual living arrangements for the disabled based on staff.
3. use a special use or conditional permit to control traffic.
4. limit group homes by application of a definition of family or limitation on the number of unrelated residents.
5. limit either the number of group homes within a community or impose distancing requirements.
6. imply differential utility rates.
7. require a group home to notify neighbors of its establishment.

The City may impose the following types of restrictions under state and federal law:

1. Reasonable Occupancy Limits. Uniformly applied building code provisions which limit occupancy based on neutral factors such as square footage, exiting requirements and other basic health safety and protections are enforceable.
2. Evenly Applied Engineering and Zoning Protections. Engineering requirements such as impervious surface requirements designed to protect all persons and which are even-handedly applied or enforceable know there is no requirement of reasonable accommodation.
3. Prohibition of Active Drug and Alcohol Use. Persons who are actively abusing illegal drugs and alcohol are not subject to the protections of the Fair Housing Act Amendments. Abusers lose their protection as qualifying disabled individuals. Criminal statutes provide adequate protections for illegal drug use.
4. Direct Threat to Others or to Property. The Fair Housing Act Amendments contain an exemption for tenancy which would “constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the properties of others.” 42 U.S.C. §3604(t)(9).

The City may also urge the state to regulate. Group homes which are established by for profit entities pose new challenges both for local governments, citizens and for the residents of the facilities themselves. The state licenses adult family homes, for example, and, it would seem to make sense should similarly license commercial group homes to provide the same levels of assurances and protections.