

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Division of Housing Policy Development

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June 17, 2002

MEMORANDUM TO:

Planning Directors and Interested Parties

FROM:


Cathy E. Creswell, Deputy Director
Division of Housing Policy Development

SUBJECT:

Housing Element Legislation Effective January 1, 2002

As you know, all localities are required to prepare and adopt a housing element as a part of their general plan. The housing element must include, among other things, identification and analysis of existing and projected housing needs, an identification of resources and constraints to address these needs and, goals, policies and scheduled programs for the maintenance improvement and development of housing for all economic segments of the community. For your information, Chapter 671, Statutes of 2001 (Senate Bill 520-Chesbro) effective on January 1, 2002, amended housing element law and Government Code Section 65008. As a result, State housing element law now requires localities to include the following in the preparation and adoption of a housing element:

1. As part of a governmental constraints analysis, an element must analyze potential and actual constraints upon the development, maintenance and improvement of housing for *persons with disabilities and demonstrate local efforts to remove governmental constraints that hinder the locality from meeting the need for housing for persons with disabilities* (Section 65583(a)(4)).
2. As part of the required constraints program, the element must include programs that *remove constraints or provide reasonable accommodations for housing designed for persons with disabilities* (Section 65583(c)(3)).

All elements adopted after January 1, 2002 should comply with the requirements of Chapter 671. The Department is developing technical assistance materials to assist localities in the implementation of these new provisions.

The attached information is provided to inform localities and to assist in evaluating how these new provisions of law effect your communities. A copy of the legislation can be found on the Department's website at www.hcd.ca.gov. You may obtain copies of published bills from the 2001 session from the Legislative Bill Room at (916) 445-2323 or from the Senate's website at: www.senate.ca.gov. If you have any questions or would like additional information on housing element requirements, please contact Paul Mc Dougall, of our staff, at (916) 322-7995.

Attachments

Chapter 671, Statutes of 2001 (Senate Bill 520)

Section 1 of Chapter 671 of 2001 statutes (SB 520) imparts the following:

It is the intent of the legislature in enacting this act only to clarify existing state requirements and not to establish any new reimbursable state mandate.

In addition, Chapter 671 amends two areas of planning and land use law within the Government Code: Chapter 1 - General Provisions (Section 65008) and Chapter 3 – Local Planning (Article 10.6, starting with Section 65580), specifically, as follows, excluding minor clean-up amendments.

Government Code Section 65008 Excerpts (additions or changes in italics/underlined and deletions indicated by asterisks)

65008. (a) Any action pursuant to this title by any city, county, city and county, or other local governmental agency in this state is null and void if it denies to any individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in this state because of any of the following reasons:

(1) The race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, *familial status, disability*, or age of the *individual* or group of individuals. *For purposes of this section, both of the following definitions apply:*

(A) "Familial status" as defined in Section 12955.2.

(B) "Disability" as defined in Section 12955.3.

(2) The method of financing of any residential development of the individual or group of individuals.

(3) The intended occupancy of any residential development by persons or families of low, moderate, or middle income.

(b) No city, county, city and county, or other local governmental agency shall, in the enactment or administration of ordinances pursuant to this title, prohibit or discriminate against any residential development or emergency shelter because of the method of financing or the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, *familial status, disability*, or age of the owners or intended occupants of the residential development or emergency shelter.

(c) Omitted – Chapter 671 did not have major changes to this subsection

(d) (1) No city, county, city and county, or other local governmental agency may impose different requirements on a residential development or emergency shelter that is subsidized, financed, insured, or otherwise assisted by the federal or state government or by a local public entity, as defined in Section 50079 of the Health and Safety Code, than those imposed on nonassisted developments, except as provided in subdivision (e).

Chapter 671, Statutes of 2001 (Senate Bill 520)

(2) No city, county, city and county, or other local governmental agency may, because of the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, *familial status, disability,* or age of the intended occupants, or because the development is intended for occupancy by persons and families of low, moderate, or middle income, impose different requirements on these residential developments than those imposed on developments generally, except as provided in subdivision (e).

(e-g) – Omitted - Chapter 671 did not have major changes to these subsections

(h) The Legislature finds and declares that discriminatory practices that inhibit the development of housing for persons and families of low, moderate, and middle income, or emergency shelters for the homeless, are a matter of statewide concern.

Government Code Section 65583, Excerpts from Housing Element Law (additions or changes in italics/underlined and deletions indicated by asterisks)

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include the following:

(1 - 3) Omitted – Chapter 671 did not have major changes to these subsections.

(4) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels *and for persons with disabilities as identified in the analysis pursuant to paragraph (4) of subdivision (a)*, including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 *and from meeting the need for housing for persons with disabilities identified pursuant to paragraph (6).*

(5) Omitted – Chapter 671 did not have major changes to this subsection.

(6) An analysis of any special housing needs, such as those of the *** “handicapped” omitted*** elderly, *persons with disabilities*, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter.

Chapter 671, Statutes of 2001 **(Senate Bill 520)**

(7 - 8) *Omitted – Chapter 671 did not have major changes to these subsections.*

(b) *Omitted – Chapter 671 did not have major changes to this subsection.*

(c) *Omitted – Chapter 671 did not have major changes to this subsection.*

(1-2) *Omitted – Chapter 671 did not have major changes to this subsection.*

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, or provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

(4) *Omitted – Chapter 671 did not have major changes to this subsection.*

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, *** “or” omitted*** color, familial status, or disability.

(6) *Omitted – Chapter 671 did not have major changes to this subsection.*

(d-e) *Omitted – Chapter 671 did not have major changes to these subsections.*

Chapter 671, Statutes of 2001

(Senate Bill 520)

IMPLEMENTATION ISSUES

The following is a list of potential issues in a question and answer format to assist localities in implementing the provisions of Chapter 671 (SB 520).

Question #1: What requirements does Chapter 671 add to the housing element process?

Answer: Prior to January 1, 2002 local governments were required to include an analysis of special housing needs in the housing element, including the needs of handicapped persons. SB 520 requires that in addition to the needs analysis for persons with disabilities, the housing element must analyze potential governmental constraints to the development, improvement and maintenance of housing for persons with disabilities and to include a program to remove constraints to, or provide reasonable accommodations for housing designed for occupancy by, or with supportive services for persons with disabilities.

Question #2: What does the law mean by "housing designed for occupancy by, or with supportive services for, persons with disabilities"?

Answer: The new law incorporates the definition of "disability" from the California Fair Employment and Housing Act, Government Code Section 12955.3. See the attached pertinent sections of the Government Code. Housing designed for occupancy by, or with supportive services for persons with disabilities includes a wide range of housing types. For example, housing that is physically accessible to people with mobility impairments, residential care facilities for individuals with disabilities or for the elderly, group homes, housing for individuals with Alzheimer's, housing for persons with AIDS/HIV, housing with support services and transitional housing that serve homeless with disabilities are within the meaning of "housing designed for occupancy by, or with supportive services for, persons with disabilities."

Question #3: Does Chapter 671 apply to jurisdictions that adopted elements prior to January 1, 2002?

Answer: No. The new law applies to any jurisdiction that adopts a housing element after January 1, 2002.

Chapter 671, Statutes of 2001 **(Senate Bill 520)**

Question #4: What does the law require of a jurisdiction, as part of its governmental constraints program?

Answer: The law requires local governments to remove constraints to housing for persons with disabilities or provide reasonable accommodation to housing for persons with disabilities. Among other things, provisions in a local government's zoning and land use ordinances which restrict or limit housing for persons with disabilities should be identified in the jurisdiction's analysis of potential and actual governmental constraints to housing for persons with disabilities. The Department will be developing a list of examples to assist jurisdictions in the implementation of this requirement. In the meantime, the California Attorney General issued a letter on May 15, 2001 to all mayors and the County Supervisors Association of California that could be useful in understanding "reasonable accommodation" in the zoning and land use context. A copy of this has been attached for your reference.

Question #5: Are there examples of "reasonable accommodation" ordinances that local governments have adopted in California recently?

Answer: While adopting a reasonable accommodation ordinance is not the only means of complying with the provisions of Chapter 671, the Attorney General's Letter cites examples of local ordinances, Long Beach and San Jose, and includes a reference to an organization that can provide more examples.

DEFINITION OF "DISABILITY" FROM THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, GOVERNMENT CODE SECTIONS 12955.3. AND 12926

12955.3. For purposes of this part, "disability" includes, but is not limited to, any physical or mental disability as defined in Section 12926.

12926. As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) "Affirmative relief" or "prospective relief" includes the authority to order reinstatement of an employee, awards of backpay, reimbursement of out-of-pocket expenses, hiring, transfers, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices under this part.

(b) "Age" refers to the chronological age of any individual who has reached his or her 40th birthday.

(c) "Employee" does not include any individual employed by his or her parents, spouse, or child, or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.

(d) "Employer" includes any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, the state or any political or civil subdivision of the state, and cities, except as follows:

"Employer" does not include a religious association or corporation not organized for private profit.

(e) "Employment agency" includes any person undertaking for compensation to procure employees or opportunities to work.

(f) "Essential functions" means the fundamental job duties of the employment position the individual with a disability holds or desires. "Essential functions" does not include the marginal functions of the position.

(1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:

(A) The function may be essential because the reason the position exists is to perform that function.

(B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.

(C) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(2) Evidence of whether a particular function is essential includes, but is not limited to, the following:

(A) The employer's judgment as to which functions are essential.

(B) Written job descriptions prepared before advertising or interviewing applicants for the job.

(C) The amount of time spent on the job performing the function.

(D) The consequences of not requiring the incumbent to perform the function.

(E) The terms of a collective bargaining agreement.

(F) The work experiences of past incumbents in the job.

(G) The current work experience of incumbents in similar jobs.

DEFINITION OF "DISABILITY" FROM THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, GOVERNMENT CODE SECTIONS 12955.3. AND 12926

(g) "Labor organization" includes any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(h) "Medical condition" means either of the following:

(1) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.

(2) Genetic characteristics. For purposes of this section, "genetic characteristics" means either of the following:

(A) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.

(B) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

(i) "Mental disability" includes, but is not limited to, all of the following:

(1) Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:

(A) "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.

(C) "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working.

(2) Any other mental or psychological disorder or condition not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).

"Mental disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(j) "On the bases enumerated in this part" means or refers to discrimination on the basis of one or more of the following: race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

(k) "Physical disability" includes, but is not limited to, all of the following:

(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

DEFINITION OF "DISABILITY" FROM THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, GOVERNMENT CODE SECTIONS 12955.3. AND 12926

(A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(B) Limits a major life activity. For purposes of this section:

(i) "Limits" shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) "Major life activities" shall be broadly construed and includes physical, mental, and social activities and working.

(2) Any other health impairment not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) "Physical disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(l) Notwithstanding subdivisions (i) and (k), if the definition of "disability" used in the Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (i) or (k), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (i) and (k).

(m) "Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation" includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(n) "Reasonable accommodation" may include either of the following:

(1) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.

(2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(o) "Religious creed," "religion," "religious observance," "religious belief," and "creed" include all aspects of religious belief, observance, and practice.

(p) "Sex" includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.

DEFINITION OF "DISABILITY" FROM THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, GOVERNMENT CODE SECTIONS 12955.3. AND 12926

(q) "Sexual orientation" means heterosexuality, homosexuality, and bisexuality.

(r) "Supervisor" means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(s) "Undue hardship" means an action requiring significant difficulty or expense, when considered in light of the following factors: (1) the nature and cost of the accommodation needed, (2) the overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility, (3) the overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities, (4) the type of operations, including the composition, structure, and functions of the workforce of the entity, and (5) the geographic separateness, administrative, or fiscal relationship of the facility or facilities.

SB 520 Analysis Tool

The following list of questions has been developed to guide an analysis of constraints on the development, maintenance and improvement of housing for persons with disabilities. These questions are meant as a device for a locality to develop an analysis that is unique to its own set of circumstances. However, a thorough analysis should touch upon each of the three general categories (i.e., Zoning/Land Use, Permit and Processing Procedures and Building Codes). Also, entitlement jurisdictions should have conducted an analysis of impediments to fair housing for the purposes of receiving funds from Housing and Urban Development (HUD). This impediments analysis contains similar elements and may be a useful resource for a SB 520 constraints analysis.

If you have any questions, please contact Paul Mc Dougall at (916) 322-7995

Over-arching and General

- Does the locality have any processes for individuals with disabilities to make requests for reasonable accommodation with respect to zoning, permit processing, or building laws?
- Describe the process for requesting a reasonable accommodation.
- Has the locality made any efforts to remove constraints on housing for persons with disabilities, such as accommodating procedures for the approval of group homes, ADA retrofit efforts, an evaluation of the zoning code for ADA compliance or other measures that provide flexibility?
- Does the locality make information available about requesting a reasonable accommodation with respect to zoning, permit processing, or building laws?

Zoning and Land Use

- Has the locality reviewed all of its zoning laws, policies and practices for compliance with fair housing law?
- Are residential parking standards for persons with disabilities different from other parking standards? Does the locality have a policy or program for the reduction of parking requirements for special needs housing if a project proponent can demonstrate a reduced need for parking?
- Does the locality restrict the siting of group homes? How does this effect the development and cost of housing?
- What zones allow groups homes other than those residential zones covered by state law. Are group homes over six persons also allowed?
- Does the locality have occupancy standards in the zoning code that apply specifically to unrelated adults and not to families? Do the occupancy standards comply with Fair Housing Laws?
- Does the land-use element regulate the siting of special need housing in relationship to one another? Specifically, is there a minimum distance required between two (or more) special needs housing?

SB 520 Analysis Tool

Permits and Processing

- How does the locality process a request to retrofit homes for accessibility (i.e., ramp request)?
- Does the locality allow group homes with fewer than six persons by right in single-family zones? What permits, if any, are required?
- Does the locality have a set of particular conditions or use restrictions for group homes with greater than 6 persons? What are they? How do they effect the development of housing for persons with disabilities?
- What kind of community input does the locality allow for the approval of group homes? Is it different than from other types of residential development?
- Does the locality have particular conditions for group homes that will be providing services on-site? How may these conditions affect the development or conversion of residences to meet the needs of persons with disabilities?

Building Codes

- Has the locality adopted the Uniform Building Code? What year? Has the locality made amendments that might diminish the ability to accommodate persons with disabilities?
- Has the locality adopted any universal design elements in the building code?
- Does the locality provide reasonable accommodation for persons with disabilities in the enforcement of building codes and the issuance of building permits?

Tentative List of Organizational Resources

The Department is in the process of creating a list of organizations that can assist localities in the implementation of provisions under Chapter 671. The following list consists of a few organizations in the housing for persons with disabilities arena and represents a starting point for a list of organizational resources that will be added to in the future. In the meantime, the department was provided with a list of affiliates to the Mental Health Association in California (MHAC), MHAC roster by County and list of County Mental Health Directors (Courtesy of California Mental Health Directors Association). These lists are available upon request and will be incorporated into the comprehensive list once more complete information is gathered. If you have any suggestions for potential organizations to be added or would like the lists mentioned above, please contact Paul Mc Dougall at (916) 322-7995.

California Department of Rehabilitation

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2000 Evergreen Street
Sacramento, CA 95815
Phone: (916) 263-8981 (VOICE)
(916) 263-7477 (TTY)

www.dor.ca.gov

(Web page includes list of Independent Living Centers)

Protection & Advocacy, Inc.

Ms. Dara Schur
433 Hegenberger Road, Suite 220
Oakland, CA 94621
Phone: (510) 430-8033
www.pai-ca.org

Law Office of Kim Savage

Post Office Box 41580
Long Beach, California 90853
Phone: (562) 930-1113

Law Office of David Grabill

1930 Alderbrook Lane
Santa Rosa, CA 95405
Phone: (707) 528-6839

Mental Health Association in California (MHAC)

1127 11th Street, Suite 830
Sacramento, CA 95814
Phone: (916) 557-1167

California Mental Health Directors Association (CMHDA)

2030 'J' Street
Sacramento, CA 95814
Phone: (916) 556-3477



STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
BILL LOCKYER
ATTORNEY GENERAL

May 15, 2001

RE: Adoption of A Reasonable Accommodation Procedure

Dear

Both the federal Fair Housing Act ("FHA") and the California Fair Employment and Housing Act ("FEHA") impose an affirmative duty on local governments to make reasonable accommodations (*i.e.*, modifications or exceptions) in their zoning laws and other land use regulations and practices when such accommodations "may be necessary to afford" disabled persons "an equal opportunity to use and enjoy a dwelling." (42 U.S.C. § 3604(f)(3)(B); see also Gov. Code, §§ 12927(c)(1), 12955(1).)¹ Although this mandate has been in existence for some years now, it is our understanding that only two or three local jurisdictions in California provide a process specifically designed for people with disabilities and other eligible persons to utilize in making such requests. In my capacity as Attorney General of the State of California, I share responsibility for the enforcement of the FEHA's reasonable accommodations requirement with the Department of Fair Employment and Housing. Accordingly, I am writing to encourage your jurisdiction to adopt a procedure for handling such requests and to make its availability known within your community.²

¹ Title II of the Americans with Disabilities Act (42 U.S.C. §§ 12131-65) and section 504 of the Rehabilitation Act (29 U.S.C. § 794) have also been found to apply to zoning ordinances and to require local jurisdictions to make reasonable accommodations in their requirements in certain circumstances. (See *Bay Area Addiction Research v. City of Antioch* (9th Cir. 1999) 179 F.3d 725; see also 28 C.F.R. § 35.130(b)(7) (1997).)

² A similar appeal has been issued by the agencies responsible for enforcement of the FHA. (See Joint Statement of the Department of Justice and the Department of Housing and Urban Development, *Group Homes, Local Land Use and the Fair Housing Act* (Aug. 18, 1999), p. 4, at <<http://www.bazelon.org/cpfha/cpfha.htm>> [as of February 27, 2001].)

It is becoming increasingly important that a process be made available for handling such requests that operates promptly and efficiently. A report issued in 1999 by the California Independent Living Council makes it abundantly clear that the need for accessible and affordable housing for Californians with disabilities will increase significantly over the course of the present decade.³ The report's major findings include the following:

- Between 1999 and 2010, the number of Californians with some form of physical or psychological disability is expected to increase by at least 19 percent, from approximately 6.6 million to 7.8 million, and may rise as high as 11.2 million. The number with severe disabilities is expected to increase at approximately the same rate, from 3.1 million to 3.7 million, and may reach 6.3 million.⁴ Further, most of this increase will likely be concentrated in California's nine largest counties.⁵
- If the percentages of this population who live in community settings—that is, in private homes or apartments (roughly 66.4 percent) and group homes (approximately 10.8 percent)—is to be maintained, there will have to be a substantial expansion in the stock of suitable housing in the next decade. The projected growth of this population translates into a need to accommodate an additional 800,000 to 3.1 million people with disabilities in affordable and accessible private residences or apartments and an additional 100,000 to 500,000 in group homes.

I recognize that many jurisdictions currently handle requests by people with disabilities for relief from the strict terms of their zoning ordinances pursuant to existing variance or conditional use permit procedures. I also recognize that several courts called upon to address the matter have concluded that requiring people with disabilities to utilize existing, non-

³See Tootelian & Gaedeke, *The Impact of Housing Availability, Accessibility, and Affordability On People With Disabilities* (April 1999) at <http://www.calsilc.org/housing.html> [as of February 27, 2001].

⁴The lower projections are based on the assumption that the percentage of California residents with disabilities will remain constant over time, at approximately 19 percent (*i.e.*, one in every five) overall, with about 9.2 percent having severe disabilities. The higher figures, reflecting adjustments for the aging of the state's population and the higher proportion of the elderly who are disabled, assume that these percentages will increase to around 28 percent (*i.e.*, one in every four) overall, with 16 percent having severe disabilities. (*Ibid.*)

⁵These are: Alameda, Contra Costa, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, and Santa Clara. (*Ibid.*)

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discriminatory procedures such as these is not of itself a violation of the FHA.⁶ Several considerations counsel against exclusive reliance on these alternative procedures, however.

Chief among these is the increased risk of wrongfully denying a disabled applicant's request for relief and incurring the consequent liability for monetary damages, penalties, attorneys' fees, and costs which violations of the state and federal fair housing laws often entail.⁷ This risk exists because the criteria for determining whether to grant a variance or conditional use permit typically differ from those which govern the determination whether a requested accommodation is reasonable within the meaning of the fair housing laws.⁸

Thus, municipalities relying upon these alternative procedures have found themselves in the position of having refused to approve a project as a result of considerations which, while sufficient to justify the refusal under the criteria applicable to grant of a variance or conditional use permit, were insufficient to justify the denial when judged in light of the fair housing laws' reasonable accommodations mandate. (See, e.g., *Hovson's Inc. v. Township of Brick* (3rd Cir. 1996) 89 F.3d 1096 (township found to have violated the FHA's reasonable accommodation mandate in refusing to grant a conditional use permit to allow construction of a nursing home in a "Rural Residential—Adult Community Zone" despite the fact that the denial was sustained by the state courts under applicable zoning criteria); *Trovato v. City of Manchester, N.H.* (D.N.H. 1997) 992 F.Supp. 493 (city which denied disabled applicants permission to build a paved parking space in front of their home because of their failure to meet state law requirements for a variance found to have violated the FHA's reasonable accommodation mandate).

⁶See, *U.S. v. Village of Palatine, Ill.* (7th Cir. 1994) 37 F.3d 1230, 1234; *Oxford House, Inc. v. City of Virginia Beach* (E.D.Va. 1993) 825 F.Supp. 1251, 1262; see generally Annot. (1998) 148 A.L.R. Fed. 1, 115-121, and later cases (2000 pocket supp.) p. 4.)

⁷ See 42 U.S.C. § 3604(f)(3)(B); Gov. Code, §§ 12987(a), 12989.3(f).

⁸ Under the FHA, an accommodation is deemed "reasonable" so long as it does not impose "undue financial and administrative burdens" on the municipality or require a "fundamental alteration in the nature" of its zoning scheme. (See, e.g., *City of Edmonds v. Washington State Bldg. Code Council* (9th Cir. 1994) 18 F.3d 802, 806; *Turning Point, Inc. v. City of Caldwell* (9th Cir. 1996) 74 F.3d 941; *Hovsons, Inc. v. Township of Brick* (3rd Cir. 1996) 89 F.3d 1096, 1104; *Smith & Lee Associates, Inc. v. City of Taylor, Michigan* (6th Cir. 1996) 102 F.3d 781, 795; *Erdman v. City of Fort Atkinson* (7th Cir. 1996) 84 F.3d 960; *Shapiro v. Cadman Towers, Inc.* (2d Cir. 1995) 51 F.3d 328, 334; see also Gov. Code, § 12955.6 [explicitly declaring that the FEHA's housing discrimination provisions shall be construed to afford people with disabilities, among others, no lesser rights or remedies than the FHA].)

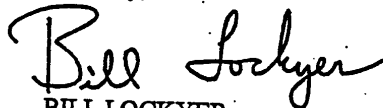
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Further, and perhaps even more importantly, it may well be that reliance on these alternative procedures, with their different governing criteria, serves at least in some circumstances to encourage community opposition to projects involving desperately needed housing for the disabled. As you are well aware, opposition to such housing is often grounded on stereotypical assumptions about people with disabilities and apparently equally unfounded concerns about the impact of such homes on surrounding property values.⁹ Moreover, once triggered, it is difficult to quell. Yet this is the very type of opposition that, for example, the typical conditional use permit procedure, with its general health, safety, and welfare standard, would seem rather predictably to invite, whereas a procedure conducted pursuant to the more focused criteria applicable to the reasonable accommodation determination would not.

For these reasons, I urge your jurisdiction to amend your zoning ordinances to include a procedure for handling requests for reasonable accommodation made pursuant to the fair housing laws. This task is not a burdensome one. Examples of reasonable accommodation ordinances are easily attainable from jurisdictions which have already taken this step¹⁰ and from various nonprofit groups which provide services to people with disabilities, among others.¹¹ It is, however, an important one. By taking this one, relatively simple step, you can help to ensure the inclusion in our communities of those among us who are disabled.

Sincerely,



BILL LOCKYER
Attorney General

⁹Numerous studies support the conclusion that such concerns about property values are misplaced. (See Lauber, *A Real LULU: Zoning for Group Homes and Halfway Houses Under The Fair Housing Amendments Act of 1988* (Winter 1996) 29 J. Marshall L. Rev. 369, 384-385 & fn. 50 (reporting that there are more than fifty such studies, all of which found no effect on property values, even for the homes immediately adjacent).) A compendium of these studies, many of which also document the lack of any foundation for other commonly expressed fears about housing for people with disabilities, is available. (See Council of Planning Librarians, *There Goes the Neighborhood . . . A Summary of Studies Addressing the Most Often Expressed Fears about the Effects Of Group Homes on Neighborhoods in which They Are Placed* (Bibliography No. 259) (Apr. 1990).)

¹⁰ Within California, these include the cities of Long Beach and San Jose.

¹¹ Mental Health Advocacy Services, Inc., of Los Angeles for example, maintains a collection of reasonable accommodations ordinances, copies of which are available upon request.