

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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September 26, 2025

Christopher Burton, Director, Planning Services Division
City of San José
200 East Santa Clara Street
San José, CA 95113

Dear Christopher Burton:

RE: City of San José – Group Home Ordinance – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) received a request for technical assistance from the City of San José (City) regarding the implementation of the City's 6th Cycle Housing Element Program P-42 (Group Homes for Seven or More Persons) in light of the Ninth Circuit's April 2025 decision in *Ohio House, LLC v. City of Costa Mesa*. In that decision, the court rejected claims that Costa Mesa's group home regulations discriminated against persons with disabilities.¹ This letter responds to the City's request and provides guidance regarding group homes and conditional use permits, and compliance with the state's Anti-Discrimination in Land Use (ALU) Law,² Affirmatively Furthering Fair Housing (AFFH) Law,³ and Housing Element Law.⁴

The scope of this technical assistance letter is primarily focused on the "residential service facilities" land use, which the City's zoning code identifies as a residential facility where an operator receives compensation for the provision of services and does not provide a service that requires a license under state law. From correspondence with the City, it is HCD's understanding that:

- All other forms of unlicensed group homes in the City are treated the same as other single housekeeping units and permitted in any zoning district in the same manner as other residential dwellings in that zone, and
- The City does not propose adding any objective ordinance standards, policies, or regulations that would specifically apply to group homes.

¹ *Ohio House, LLC v. City of Costa Mesa (Ohio House)* (9th Cir. 2025) 135 F.4th 645.

² Gov. Code, § 65008.

³ Gov. Code, §§ 8899.50, 66583.

⁴ Gov. Code, § 65580 et seq.

Background

HCD Group Home Technical Advisory

In December 2022, HCD issued a Group Home Technical Advisory (Group Home TA) to provide guidance to local governments on how to comply with state planning and zoning and fair housing laws (collectively, state housing laws) regarding group homes and local land use policies and practices. The Group Home TA advises local governments to treat group homes that do not provide licensable services the same as other residential dwellings, consistent with state housing laws such as the ALU Law, AFFH Law, and Housing Element Law, by applying only generally applicable health, safety, and zoning laws.⁵ Local governments can apply requested reasonable accommodations that are appropriate in some circumstances to provide specific benefit for, or address health or safety issues to, persons with disabilities.⁶

Housing Element Program P-42 (Group Homes for Seven or More Persons)

On January 29, 2024, HCD certified the City's adopted 6th cycle housing element, which included Program P-42 to: "Update the zoning code to be consistent with state and federal laws and AFFH by ensuring that group homes serving seven or more persons are subject only to the generally applicable, non-discriminatory health, safety, and zoning laws that apply to all single-family residences."

Ohio House v. City of Costa Mesa

Ohio House, a group home operator in the City of Costa Mesa, sued that city in federal court, bringing claims that the city violated the federal Fair Housing Act (FHA)⁷ and the state's Fair Employment and Housing Act (FEHA)⁸ by, among other things, imposing regulations on group homes that were more restrictive than those generally imposed on housing in the same zoning districts.⁹ After the City prevailed in the district court, Ohio House filed an appeal with the Ninth Circuit.¹⁰ In June 2023, the Attorney General filed an amicus brief (Amicus Brief) on behalf of HCD and the Civil Rights Department (CRD) supporting Ohio House's appeal and explaining how the district court's rulings and verdicts conflicted with state law, including the FEHA, Housing Element Law, AFFH laws, and the California Constitution's right to privacy.¹¹

⁵ See, e.g., HCD Group Home Technical Advisory (2022) ("Group Home TA") at pp. 1-4, 25-26. available at:

<https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/group-home-technical-advisory-2022.pdf>.

⁶ Cal. Code Regs., tit. 2, § 12042, subd. (f); see also Group Home TA, p. 32.

⁷ 42 U.S.C. §§ 3601-3619.

⁸ Gov. Code, §§ 12900-12999.

⁹ *Ohio House*, *supra*, 135 F.4th at pp. 659-660.

¹⁰ *Id.*

¹¹ *Id.* at Docket Entry 24, available at:

<https://oag.ca.gov/system/files/media/amicus-brief-25-2.pdf>

In April 2025, without addressing the analysis of state law in the Group Home TA or the Amicus Brief, the Ninth Circuit denied Ohio House's appeal and ruled that Costa Mesa's group home regulations, including special permitting and spacing requirements, complied with the FHA and FEHA.¹² The Ninth Circuit based this decision, in part, on Costa Mesa's arguments that (1) its regulations benefited group homes by treating them more favorably than boarding houses and were necessary to preserve the "residential character" of neighborhoods and prevent too many group homes located near each other, creating "institutionalized" living conditions; (2) Ohio House had waived its claims under the ALU Law and not presented data-based evidence of discriminatory effects; and (3) Ohio House's reasonable accommodation requests for modifications of the group home regulations would have fundamentally altered Costa Mesa's zoning code.¹³

State Group Home Definitions

Various laws use the term "group homes" to refer to different types of housing for different populations. For the purposes of state housing laws, this letter refers to the following terms for residences in which unrelated persons share one residence:

- **Group Homes** are housing shared by unrelated persons with disabilities that provide peer and other support for their residents' disability-related needs—in which residents may share cooking, dining, and living areas and participate in other communal living activities—but do not provide services that require licenses under state law.¹⁴
- **Transitional housing** is defined in Housing Element Law as "buildings configured as rental housing developments, but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six months from the beginning of the assistance."¹⁵
- **Supportive housing** is defined in Housing Element Law as "housing with no limit on length of stay, that is occupied by the target population, and that is linked to an onsite or offsite service that assists the supportive housing resident in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community."¹⁶ In addition, supportive housing shall be a by-right use in zones where multifamily and mixed uses are permitted if the proposed housing development meets certain criteria, including deed-restricted affordability, public funding, floor area usage, and facilities requirements.¹⁷

¹² *Ohio House, supra*, 135 F.4th at pp. 660-680.

¹³ *Id.*

¹⁴ Group Home TA at p. 5. In this letter, where "group home" is referenced, HCD refers specifically to unlicensed group homes. The Group Home TA includes separate definitions for "group homes" and "unlicensed group homes."

¹⁵ Gov. Code, § 65582, subd. (q).

¹⁶ Gov. Code, § 65582, subd. (n).

¹⁷ Gov. Code, § 65651.

Housing Element Law requires that “transitional housing and supportive housing shall be considered a residential use of property and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.”¹⁸ While transitional housing and supportive housing may fall within the definition of “group home,” the two forms of housing together do not encompass the full scope of group homes. In other words, there may be uses that are considered group homes but are not “transitional housing” or “supportive housing.”

City of San José Zoning Code Definitions

Currently, the City’s zoning code includes definitions for “transitional housing” and “permanent supportive housing” that differ slightly from definitions in Housing Element Law. In the City’s zoning code, transitional housing is “subject only to those restrictions that apply to other *residential uses* of the same residential housing type located *in the same zoning district*”¹⁹ (emphasis added), whereas Housing Element Law, as mentioned earlier, requires equal treatment of *residential dwelling type* in the same zone. Supportive housing is “housing with no limit on length of stay and that is occupied by a target population as defined in subdivision [(n)] of Section 65582 of the California Government Code” and “shall be allowed in residential, commercial, public/quasi-public, and the downtown zoning districts.”²⁰ However, the City’s zoning code currently does not permit permanent supportive housing in several of its residential zoning districts, including R-1, R-2, and R-MH.²¹

For unlicensed group homes that do not match the definition of “transitional housing” or “permanent supportive housing,” the City’s residential zoning code includes a separate land use classification for “residential service facility”:

- **“Residential Service Facility”** is defined as “a residential facility, *other than a residential care facility or single housekeeping unit*, where the operator receives compensation for the provision of personal services, in addition to housing, including but not limited to, protection, supervision, assistance, guidance, training, therapy or other nonmedical care.”²² (Emphasis added.)

According to the City’s zoning code, a residential service facility is distinct from a residential care facility²³ in that its functions do not require a license under state law. A residential service facility is also distinct from a single housekeeping unit²⁴ due to the presence of an operator that receives compensation for the provision of personal services. Notably, an unlicensed group home that does not otherwise fall under the definition of a “residential service facility” (e.g., a facility that does not have an operator but otherwise includes care for persons in need of personal and nonmedical services

¹⁸ Gov. Code, § 65583, subd. (c)(3).

¹⁹ SJMC, § [20.200.1283](#) (“Transitional housing”).

²⁰ SJMC, § [20.200.1265](#) (“Permanent supportive housing”).

²¹ SJMC, § [20.30.100, Table 20-50](#) (Residential Zoning District Use Regulations).

²² SJMC, § [20.200.1030](#) (“Residential service facility”).

²³ SJMC, § [20.200.1010](#) (“Residential care facility”).

²⁴ SJMC, § [20.200.1130](#) (“Single housekeeping units”).

including protection, guidance, training, etc.) is considered a “single housekeeping unit” and treated the same as other similar residential uses in the zoning district.

Analysis

Can the City require a Conditional Use Permit (CUP) for a residential service facility within a residential dwelling?

No, the City cannot require a CUP for a residential service facility, including on the basis that its occupants include seven or more unrelated persons with disabilities, if the City does not require a CUP for similar dwellings in the same zone. Currently, residential service facilities serving six or fewer persons are permitted in all residential zones, but facilities serving seven or more persons are only conditionally permitted in the R-M and R-MH zones and are not permitted in the City’s R-1 and R-2 zones.

Imposing CUPs on or not permitting residential service facilities in these zones is inconsistent with state law. For example, these requirements conflict with the ALU Law, which prohibits discrimination against housing occupied or intended for occupancy by individuals or groups protected by state fair housing laws, which include persons with disabilities and the group homes that serve them.²⁵ More specifically, the ALU Law prohibits imposing “different requirements on . . . residential developments” because they are intended to be occupied by persons with disabilities or other protected characteristics “than those imposed on developments generally”²⁶

In addition, these permitting restrictions and requirements for group homes could conflict with the City’s AFFH duties under both the general AFFH statute and Housing Element Law, which, among other things, require the City to promote, support, and remove constraints on housing for persons with disabilities and to adopt and implement housing element programs that measurably advance these goals.²⁷

CUPs and other ordinance standards, policies, or regulations for group homes must also be viewed in the context of the state Constitution’s protections for communal homes shared by residents with or without disabilities. In *City of Santa Barbara v. Adamson*, the California Supreme Court held that the right to privacy under Article, Section 1 of the California Constitution prohibited a city ordinance that prevented more than five persons unrelated by blood or marriage from occupying a house where the owner was renting out rooms for a group of unrelated adults to live together in a communal setting.²⁸ Applying *Adamson*, a state appellate court in *City of Chula Vista v. Pagard* invalidated for the same reason a city’s permitting requirement and added regulations (e.g., occupancy limits, parking, spacing, periodic inspections) for several communal homes in single family zones that were run by the same operator.²⁹ These

²⁵ Gov. Code, § 65008, subds. (a), (b), (d).

²⁶ Gov. Code, § 65008, subd. (d)(2)(A).

²⁷ Group Home TA at pp. 9-12, 25-26.

²⁸ *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, 127-128, 130, 134-135; see also *City of Santa Barbara v. Adamson* (1979) 90 Cal.App.3d 606, 153 Cal.Rptr. 507, 509 (confirming that Adamson was charging rent to her home's other occupants).

²⁹ *City of Chula Vista v. Pagard* (1981) 115 Cal.App.3d 785, 791, 793-780.

same protections under the state Constitution apply to group homes, which are a form of communal homes intended for occupancy by persons with disabilities. And this more generally applicable constitutional doctrine informs and reinforces the specific protections for group homes under the ALU Law, AFFH Law, and Housing Element Law.

Does HCD's guidance about state law in the Group Home TA still apply after the Ninth Circuit's April 2025 decision in the Ohio House v. Costa Mesa case?

Yes, HCD's guidance about state law in the Group Home TA still applies after the Ninth Circuit's decision in *Ohio House* for the following reasons, among others:

- **The state may continue to enforce state law.** The United States Supreme Court has confirmed that federal civil rights laws set floors under, not ceilings over, the state's civil rights laws³⁰ and the Legislature has specified that state fair housing laws may be interpreted broadly to provide "greater rights and remedies,"³¹ while emphasizing that the state's protections of disability rights predate the passage of federal disability rights laws and have always "afforded additional protections" beyond those in federal laws.³²
- **State statutes and cases continue to support the analysis and guidance in HCD's Group Home TA.** State housing laws require local governments to focus on objective standards when drafting land use laws and to subject their land use policies to rigorous, data-based analysis, particularly when the policies restrict housing for persons with disabilities.³³ In addition, the California Supreme Court and appellate courts have rejected arguments that local policies restricting boarding houses, in which homeowners rent rooms to boarders living independently of each other, can be used to restrict homes in which the occupants are living together communally, which would include group homes.³⁴ Similarly, for decades, federal and state courts have rejected justifications for restrictions on group homes that were based on comparisons to restrictions on boarding houses.³⁵

³⁰ *California Federal Sav. And Loan Ass'n v. Guerra* (1987) 479 U.S. 272, 285.

³¹ Gov. Code, § 12955.6; *Auburn Woods I Homeowners Ass'n v. Fair Emp't & Hous. Comm'n* (2004) 121 Cal. App.4th 1578, 1591; Group Home TA at pp. 22-23; *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 240-252, 269-291 (separately analyzing claims brought under the FEHA, ALU Law, AFFH Law, and Housing Element Law from claims brought under the FHA)

³² Gov. Code, § 12926.1; see also Gov. Code, § 8899.50 (specifying that interpretations of state AFFH law shall not be impacted by any subsequent changes in federal law after the date that federal AFFH regulations were published in 2015).

³³ See, e.g., Gov. Code, §§ 65583 subds. (a)-(c).

³⁴ See *Colony Hill v. Ghamaty* (2006) 143 Cal.App.4th 1156, 1168-1169, citing *Adamson, supra*,) 27 Cal.3d at pp.123, 127-128, 130, 134-135, and *Pagard, supra*, 115 Cal.App.3d at pp. 791, 793-800.

³⁵ See, e.g., *Oconomowoc Residential Programs, Inc. v. City of Milwaukee* (7th Cir. 2002) 300 F.3d 775, 787; *Linn Cty. v. City of Hiawatha* (Iowa 1981) 311 N.W.2d 95, 99-100 (rejecting a city's attempt to justify its restrictions on group homes by comparing them to boarding houses and citing decisions by courts in other states finding that group homes should be treated like single family dwellings).

- **The Ninth Circuit did not address the analysis that HCD, CRD, and the Attorney General provided in the amicus brief.** The *Ohio House* decision did not address, among other things, how the state's ALU Law, AFFH Law, Housing Element Law, and *Adamson* line of cases apply to local land use regulations of group homes.³⁶ In particular, the Ninth Circuit never considered AFFH Law requiring all public agencies to address intentional discrimination and that in the ALU Law, the Legislature specifically prohibits local governments from imposing requirements on housing for persons with protected characteristics, including disabilities, beyond those generally imposed on other housing.³⁷

Conclusion

HCD's guidance on state law in the Group Home TA continues to apply after the Ninth Circuit's decision in the *Ohio House v. City of Costa Mesa* case. As such, the City must implement Housing Element Program P-42. Specifically, HCD notes the following:

- Group homes without an operator must be treated the same as single housekeeping units.
- Residential service facilities (i.e., unlicensed group homes with an operator) must be treated the same as other similar dwellings in the same zone. The City cannot require a CUP for a residential service facility on the basis that its occupants include seven or more unrelated persons with disabilities if the City does not require a CUP for similar dwellings with seven or more occupants in the same zone.
- HCD advises that the City adopt the definitions for "transitional housing" and "supportive housing" as defined in state Housing Element Law under Government Code section 65582, subdivisions (q) and (n), respectively, and maintain the provisions for by-right use for certain supportive housing projects as specified under Government Code section 65651.

In addition, generally applicable health and safety standards, such as occupancy limits based on floor area, must be administered in a nondiscriminatory manner³⁸ and therefore may be enforced consistently with the City's AFFH duties.³⁹ Reasonable accommodations for persons with disabilities are appropriate in some circumstances.⁴⁰

As noted in the Group Home TA, HCD recommends programs that focus on education, outreach, collaboration, and support for group homes and their occupants, which can be administered in ways that are consistent with the ALU Law, AFFH Law, and Housing

³⁶ *Ohio House*, *supra*, 135 F.4th at pp. 660-680.

³⁷ Gov. Code, § 65008, subd. (d)(2)(A).

³⁸ See, e.g., Cal. Code Regs., tit. 2, § 12162.

³⁹ This is subject to the limits on the City imposing more restrictive occupancy limits or other building standards than those set by state law unless the City makes the required findings that local climate, geology, or topography necessitates stricter rules. See Cal. Health & Saf. Code, §§ 17958, 17958.5, 17958.7.

⁴⁰ See, e.g., Cal. Code Regs., tit. 2, §§ 12176-12180.

Element Law.⁴¹ Programs that support group homes generally are more effective and more consistent with state housing laws than adopting overly broad land use regulations which may result in a constraint on housing for persons with disabilities.

As the City is aware, HCD continues to be responsible for enforcing and providing guidance on implementation of state housing laws, including the ALU Law, AFFH Law, and Housing Element Law.

HCD welcomes further discussions with the City and appreciates the dedication and cooperation of the City's planning staff in their implementation of Housing Element Program P-42 to protect group home uses and residents and ensure ongoing compliance between local codes and state housing laws. If you have any questions or need additional information, please contact Grace Wu at grace.wu@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal stroke extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

⁴¹ Group Home TA at pp. 11-12.