

**Congress of the United States**  
**Washington, DC 20515**

April 27, 2015

Attorney General Loretta Lynch  
Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

Secretary Julian Castro  
Department of Housing and Urban Development  
451 7th Street, S.W.  
Washington, DC 20410

Dear Attorney General Lynch and Secretary Castro:

We would like to bring your attention to an issue of major concern for communities across the United States, from coastal South Florida to Long Island and from Southern California to the suburbs of Ohio, Connecticut, and Utah – the unregulated proliferation of sober homes in residential neighborhoods.

Although there is not a legal definition, “sober home” is a name given to group homes for individuals recovering from drug and alcohol addiction. A sober home’s purpose is to help addicts who have completed addiction treatment transition back to everyday life in a residential, community environment, so that they can begin to reintegrate into the neighborhood.

In recent years, there has been a significant proliferation of sober homes across the country, concentrating in certain residential neighborhoods and causing serious problems for neighbors and local governments. For example, Delray Beach, Florida – a small city that is a vibrant family and tourist area – has close to eight hundred sober homes within its city limits. Similarly, Costa Mesa, California has close to two hundred such homes.

This over-concentration of sober homes is changing the character of residential communities, undermining the benefit of recovering addicts looking to live in a neighborhood, rather than in an institutionalized environment. In Cincinnati, Costa Mesa, and Dana Point, California, the proliferation of sober homes – many housing six to eight individuals in houses built for two to four people – has reportedly led to increased crimes rates, parking issues, overcrowding, litter, constant noise, and drug overdoses. In South Florida, the increase in sober homes is causing families to flee affected residential neighborhoods and is stretching thin the local code and law-enforcement agencies tasked with weeding out the good sober homes from the bad ones.

The rapid growth of the sober home industry has also allowed some predatory and unscrupulous operators to run facilities that fail to adequately serve their clients. A large number of these operators are taking part in insurance fraud and illegal kickback schemes, bringing scrutiny from both the Florida Division of Insurance Fraud and the FBI. A West Palm Beach sober home was raided by the FBI in September 2014, and a Delray Beach sober home was raided a few months later.

Current interpretation of federal law is complicating local efforts to effectively regulate sober homes. As you are aware, the Americans with Disabilities Amendments Act (ADAA) and its accompanying regulations define “disability” to include alcoholism and drug addiction.<sup>1</sup> The Fair

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<sup>1</sup> 24 C.F.R. § 100.201; see *Hernandez v. Hughes Missile Systems Co.*, 362 F.3d 564, 568 (9th Cir.2004) (holding that ADA protections extend to persons recovering from drug or alcohol addiction).

Housing Amendments Act (FHAA) makes it unlawful for cities to discriminate in housing laws on the basis of disability status, including addiction.<sup>2</sup> Consequently, sober home operators are shielded from local regulation of their properties and have been able to use the FHAA and ADAA to successfully fight regulations in court. Local city officials have told us that they are hesitant to regulate sober homes because they do not want to face costly litigation. For these reasons, stakeholders are calling for immediate federal action.

We sought guidance on this problem from your agencies, who suggested that we submit questions on topics that are not adequately addressed in the 1999 DOJ-HUD Joint Statement on Group Homes, Local Land Use, and the Fair Housing Act.<sup>3</sup> The pre-1999 cases on which the Joint Statement was based rarely applied the FHAA in the context of sober homes, but rather focused on other group homes for the disabled or limited their discussions to application of the FHAA to resident-run Oxford Houses, which are distinctly different from today's for-profit sober homes being operated by non-residents.<sup>4</sup>

Based upon roundtable discussions with mayors and city managers, collaboration with state legislative staff and city attorneys, and numerous meetings with constituent groups, we submit the following questions and respectfully request your response in order to guide state and local government in crafting regulations. Following these brief questions is a more detailed analysis of our concerns.

**1. Does an overconcentration of sober homes in a community constitute a "fundamental alteration to a zoning scheme," thus allowing cities to deny accommodation requests and licenses?**

- a. It is important for your agencies to explicitly state that municipalities can deny accommodation requests and/or withhold licenses from sober homes in order to prevent an overconcentration of sober homes that fundamentally changes the character of a single family neighborhood.
- b. HUD and DOJ need to advise whether or not cities are permitted to deny licenses and accommodation requests, including accommodations from distance requirements, based on the fact that multiple sober homes are *already* located in a residential community.
- c. Both agencies should confirm whether or not the Central District of California was correct when it recently held that a housing policy aimed at limiting the concentration of sober homes can be justified when it also strongly benefits recovering abusers of alcohol or drugs.

**2. What is the definition of a sober home?**

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<sup>2</sup> 42 U.S.C. § 3604(f)(1); see *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 803-04 (9th Cir.1994) (holding that those recovering from drug and alcohol addiction are disabled under the FHA and protected from housing discrimination).

<sup>3</sup> 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* (August 18, 1999).

<sup>4</sup> In the Oxford House model, there is no treatment onsite and all residents live in a non-profit, democratically run house in which they retain control over the operation of the house and over whom is permitted to reside in the house.

- a. It would be helpful to know with certainty that a sober home is defined as a recovery residence for drug and alcohol abusers that:
  - i. provides no medical treatment;
  - ii. houses only occupants who have completed drug or alcohol treatment, are not currently using alcohol or any illegal controlled substances, and demonstrate a commitment to transitioning back to life in the community; and
  - iii. is run by an operator who collects payment.

### 3. Can state or local governments require sober homes to be licensed or registered?

- a. Local and state governments need federal agency assurance that requiring sober homes to obtain a license or register is permissible under your interpretation of the FHAA.
- b. Is a system of voluntary registration for sober homes allowable?

#### Detailed Questions

##### 1) *Does sober home overconcentration constitute a “fundamental alteration to a zoning scheme,” thus allowing a city to deny a sober home’s accommodation request or application for a license?*

The Joint Statement states that “if a neighborhood came to be composed largely of group homes, [this] could adversely affect individuals with disabilities and would be inconsistent with the objective of integrating persons with disabilities into the community.” This is exactly what is happening in communities like Delray Beach, where some townhouse communities are close to eighty-five percent sober homes, and in Suffolk County, NY, where hundreds of unregulated sober homes have located themselves in single-family communities. The Joint Statement suggests that such municipalities could take action to prevent additional sober homes from entering their over-saturated communities.

However, time and again, local ordinances aimed at protecting the character of communities plagued by the proliferation of group homes have been struck down for being discriminatory or have been negated by an accommodation request.<sup>5</sup> With these cases in mind, please address the following two requests:

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<sup>5</sup> See, e.g., *Pacific Shores Properties, LLC. V. City of Newport Beach*, 730 F.3d 1142 (9th Cir. 2013) (striking down an ordinance -- defining “single-housekeeping unit” to exclude living arrangements in which residents are not all signatories to a single written lease and do not choose their own housemates -- for adversely affecting the availability of group homes and impermissibly restricting them from most residential zones); *Larkin v. Mich. Dep’t of Soc. Servs.*, 89 F.3d 285 (6th Cir. 1996) (holding that a fifteen hundred foot distance requirement between residential facilities for disabled persons was in violation of the FHAA); *Human Res. Research & Mgmt. Grp. v. Cnty. Of Suffolk*, 687 F.Supp.2d 237, 265-66 (E.D.N.Y. 2010) (holding that a law limiting substance abuse facilities to six occupants was invalid); *Nevada Fair Housing Center, Inc. v. Clark County*, 565 F.Supp. 2d 1178 (D. Nevada 2008) (holding that there was no legal justification for either a 1,500 foot spacing requirement between group homes or for a registry of group homes designed to hold homes accountable by providing the their information to police, fire rescue, and emergency medical services).

**a. Please explain what constitutes a fundamental alteration in a local government zoning scheme.**

Case law and the Joint Statement indicate that for a city to demonstrate that a request for accommodation from a zoning plan is *unreasonable*, that city must prove that a sober home's request either imposes "undue financial and administrative burdens" or requires "a fundamental alteration in the zoning scheme."<sup>6</sup> The Joint Statement, though, does not adequately explain what constitutes a fundamental alteration in a local government zoning scheme. Please define this terminology in your response. In doing so, it would be helpful for your agencies to make clear that contributing to the overconcentration of sober homes is a sufficiently "fundamental" alteration to the zoning scheme to make a requested accommodation unreasonable. Cities need to know that they may deny an accommodation request or licensing application if the addition of a new sober home will fundamentally change the character of a community. Finally, please address the legality of reasonable efforts to prevent a fundamental alteration in a neighborhood zoning scheme, including, but not limited to: a required distance between sober homes, a maximum number of sober homes in a particular area, a cap on the number of unrelated individuals living in any home in a residential community, and a limit on resident turnover.

**b. Advise whether or not cities are permitted to deny accommodation requests or licenses to sober home operators based on the fact that multiple sober homes are already located in a residential community.**

If there are *already* multiple sober homes in a residential community, it seems logical that a new sober home can be denied an accommodation or license to operate, because the presence of an *additional* home in the neighborhood would alter the zoning scheme and change the nature of the community. However, local governments need guidance in this area because the Federal courts are split as to whether or not the existence of multiple group homes is a sufficient reason to deny another home's accommodation request.<sup>7</sup> In your response, please clear up this ambiguity in the case law. In doing so, please confirm that the Fourth Circuit was correct in *Bryant Woods Inn* when it held that accommodations, including

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<sup>6</sup> See *Oxford House v. Township of Cherry Hill*, 799 F. Supp. 450, 462 (D.N.J. 1992), citing *Southeastern Community College v. Davis*, 442 U.S. 397, 410-12 (1979). See also *ReMed Recovery Centers*, 36 F. Supp. 2d 676 at 684, citing *Hovsons, Inc. v. Town of Brick*, 89 F.3d 1096, 1104 (3d Cir. 1996).

<sup>7</sup> Compare *Pacific Shores Properties, LLC v. City of Newport Beach*, 730 F.3d 1142 (9th Cir. 2013) (holding that a city's intent to preserve the character of its community by regulating sober homes, even when dozens were already present within the city limits, could be considered unlawfully discriminatory) and *U.S. v. City of Chicago Heights*, 161 F. Supp. 2d 819 (N.D. Illinois 2001) (holding that a group home's requested variance from a zoning requirement could be reasonable despite the fact that the city had already granted several such requests to other group homes and was expected to receive many more requests for accommodation in the future) with *Bryant Woods Inn, Inc. v. Howard County*, 911 F. Supp. 918 (4th Cir. 1997) (holding that ignoring the negative impact that an additional accommodation would have on a community would undermine the purpose of a city's carefully-crafted zoning plan) and *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1213 (11th Cir. 2008) (holding that requiring a city to accommodate two sober homes "located within zones which allowed only single-family residential dwellings and forbade tourist dwellings" by varying from its turnover requirements "would not be a reasonable accommodation").

those for occupancy limits, can be denied 1) based on their negative precedential value and 2) when making a small accommodation exacerbates a larger existing zoning problem.<sup>8</sup>

- c. *Confirm that an otherwise discriminatory housing policy can be justified under the FHAA when it benefits a protected class, such as recovering abusers of alcohol or drugs.*

In *Solid Landings Behavioral Health v. City of Costa Mesa*, decided earlier this year, the Central District of California upheld an ordinance regulating the distance between sober homes.<sup>9</sup> The court noted that “a facially discriminatory housing policy may be justified by a showing that ... ‘the restriction benefits [a] protected class.’”<sup>10</sup> In doing so, it found that the City of Costa Mesa’s ordinance did not violate the FHAA because, even though it required a set distance between sober homes, it also allowed sober home residents to live in large group homes in single family communities, a benefit unavailable to non-disabled individuals. The distance requirement was merely a limitation on this additional benefit. Please confirm that the court was correct in its assertion that such a distance requirement, paired with a benefit to those recovering from addiction, is not a violation of the FHAA. In this same vein, clarify whether or not a city can deny a sober home’s accommodation request when the accommodation is unnecessary to promote the sober living of its residents.

2) *What is the definition of a sober home?*

Municipalities and the addiction recovery industry both understand that there is a distinct difference between sober homes and traditional drug treatment facilities. Sober homes are privately-owned for-profit residences, located in residential communities and designed to serve as a supportive environment for *former* abusers of drugs or alcohol who have completed treatment, are now in full recovery, and wish to transition back to life in the community. However, the definition of “sober home” is not included anywhere in the Joint Statement. Please provide your agencies’ definition of “sober home.”

- a. *In your answer, please distinguish between a sober home run by an operator and an informal group of individuals recovering from drug or alcohol abuse who choose to live together.*

The cases on which the Joint Statement was based often applied the Fair Housing Act in the context of Oxford Houses,<sup>11</sup> which are recovery residences in which individuals choose to live together and have control over who else lives in their residence. These houses are distinctly different from today’s sober homes being

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<sup>8</sup> See *Bryant Woods Inn, Inc. v. Howard County*, 911 F. Supp. 918, 942-44 (4th Cir. 1997) (holding that individual “zoning decisions influence future decision-making through their precedential value within the ... judicial system” and rejecting the argument that making a “*de minimis*” accommodation is reasonable when there has already been serious encroachment upon the zoning scheme and this problem “would be exacerbated” by further accommodation).

<sup>9</sup> *Solid Landings Behavioral Health v. City of Costa Mesa*, Case No. SACV 14-1838 JVS (JCGx) (C.D. Cal. 2015).

<sup>10</sup> *Id.* at \*7.

<sup>11</sup> E.g., *Oxford House v. Township of Cherry Hill*, 799 F. Supp. 450, 462 (D.N.J. 1992).

operated for-profit by non-residents. Please clarify that the FHAA applies differently to Oxford Houses – which generally should be free from state or local regulation – and sober homes, which are run by an operator and must follow strict guidelines in order to qualify for FHAA protection.

- b. Please also distinguish between a recovery residence that is protected by the FHAA and a drug treatment facility that is fully subject to local zoning ordinances.***

There is a clear difference between sober homes and drug treatment facilities. Cities are allowed to regulate drug treatment facilities through zoning policies. These facilities are not protected by the Fair Housing Amendments Act, are highly regulated by the state, and are often required by zoning laws to be located only in particular sections of a city. The situation for sober homes, however, is less clear. Unlike intensive outpatient treatment centers – such as the “Caron” facilities in Boca Raton and Delray Beach – that provide medical and counseling services to recovering addicts, sober homes fall into a regulatory gray area, primarily because they are legally undefined.

Cities need to know with certainty that a sober home may not provide medical treatment and is only eligible for FHAA protection when its residents have completed drug or alcohol treatment, are in full recovery – including complete abstinence from drug and alcohol use – and wish to transition back to life in the community. This definition needs to be included in a revised Joint Statement.

- c. Confirm that residences housing current users of controlled substances cannot be considered sober homes protected by the FHAA and define when a resident is “no longer engaging in the use of drugs.”***

State and local government also need to know that residences housing frequent or occasional users of controlled substances cannot be considered sober homes protected by the FHAA. The Joint Statement explains that the FHAA excludes “current users of illegal controlled substances” from its protection, but it does not define *who* is included in this group. Sober home residents should not be people who have not yet sought treatment for their addiction or are not making efforts to control it. Please confirm that this analysis is correct and that residences housing current users of controlled substances are not federally-protected sober homes. In doing so, confirm that the FHAA does not protect a sober home that houses one or more individuals who still use drugs or alcohol frequently or even a home whose residents use illegal drugs infrequently. Please further confirm that alcohol use by recovering alcoholics is also covered by the “current users” exception, meaning that current abusers of alcohol are not considered disabled under the FHAA. Finally, confirm that cities and states may revoke a sober home’s license or deny its accommodation request or application for a license if the home’s occupants are found to be current users of alcohol or illegal drugs.

- d. Address the extent to which state and local government can restrict FHAA protection – including reasonable accommodations – to only those sober homes whose residents have already participated in a drug treatment program.***

It would be helpful for your agencies to state with certainty that a sober home is protected by the FHAA only if all its residents have first participated in a detoxification program and a 30-day treatment program. A residence housing addicts who are not yet in recovery should not count as a legally protected sober home, and governments need to know if they can revoke the licenses of such residences without violating the FHAA.

**3) *If regulation of sober homes is permissible, can state or local governments require sober homes to be licensed or registered?***

One of the biggest problems facing cities with large sober home populations is that, with the exception of those located in a handful of states, such as Utah, the homes do not have to register with the city, county, or state or obtain a license. Licensing is necessary so that cities can know with certainty the number of sober homes entering their neighborhoods and help preserve the character of their communities. Registration and licensing are needed to help weed out unscrupulous operators and protect residents from abuse. Without a licensing procedure, local governments cannot monitor and prevent insurance fraud, patient brokering, illegal kickbacks, unsafe living conditions, or unlawful medical treatment.

**a. *Please confirm that requiring sober homes to either obtain a license or state-certification or register with the government is not a violation of the FHAA.***

In the Joint Statement, both of your agencies state, "Especially, in the licensing and regulatory process, it is appropriate to be concerned about the setting of a group home. A consideration of over-concentration could be considered in this context."<sup>12</sup> The cities and states we represent need to know that requiring such licenses and regulations to prevent abuse and overconcentration is legally permissible.

Currently, however, it is unclear whether a state or local government can *require* sober home businesses to obtain a license or register. Last year, Members of the Florida Legislature indicated reluctance in moving forward with a mandatory sober home registration and certification bill, partly out of concern that a registration requirement might violate federal law, even though the proposed legislation was merely trying to address consumer protection issues.<sup>13</sup> Similar legislation has been discussed by the New Jersey and Ohio Legislatures and other legislative bodies across the country. Legislation in Utah requiring the licensing and registration of sober homes was adopted in 2014 but is under threat of litigation. In your response to this question, please assure state and local governments that such an effort to require sober homes to obtain licenses or certification is not a violation of federal law. In the alternative, if requiring a sober home to obtain a license or certification is a violation of the FHAA, is mandatory *registration* permissible? Please also address the extent of registration, reporting, and licensing requirements that a municipality can place on a sober home operator

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<sup>12</sup> See Joint Statement, *supra*.

<sup>13</sup> A voluntary registration bill recently passed the Florida Legislature in April 2015.

and advise when a city or state can revoke a license/certificate for non-compliance or nuisance activities.

- c. *If mandatory licensing or registration is not permissible under your interpretation of the Fair Housing Act, please address whether states or local governments may establish a system of voluntary registration for sober homes.*

In the Joint Statement, your agencies state, "A local government that believes a particular area within its boundaries has its 'fair share' of group homes could offer incentives to providers to locate future homes in other neighborhoods."<sup>14</sup> States and local governments need to know that incentives for sober homes to voluntarily obtain a license or certification from the state are permissible under this interpretation of the law.

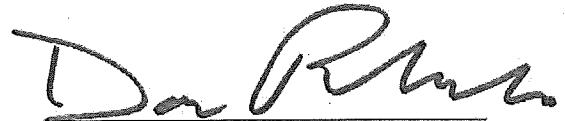
A revised Joint Statement addressing these points has the potential to give cities across the United States an opportunity to work with responsible sober home operators to develop standards for recovery residences. It is our hope that, with the help of both of your agencies, we can facilitate progress towards better regulation of the sober home industry to protect the rights of people recovering from substance abuse and maintain the fundamental character of residential neighborhoods. Thank you in advance for your support as we work together on this pressing issue.

We also wish to thank you for the professionalism and cooperation of Assistant Secretary Gustavo Velasquez, Deputy Assistant Secretary Brian Greene, and Deputy Assistant Secretary Greg Friel over the past several months in helping our offices interpret the Joint Statement.

Sincerely,



LOIS FRANKEL  
Member of Congress



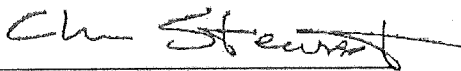
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<sup>14</sup> See Joint Statement, *supra*.