

FUTURES ASSOCIATES, INC.
SOLUTIONS FOR TREATMENT EXPANSION PROJECT (STEP)

***“ENDING
DISCRIMINATION IN
LAND USE”***

TOOL KIT TRAINING

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Please be informed that staff working on the Solutions for Treatment Expansion Project (STEP) are becoming informed about fair housing laws and how they pertain to residential treatment and supportive housing for persons with disabilities, but do not claim to be fair housing experts.

The information contained in this training has been drawn from consultations with fair housing experts and fair housing literature. Many sources are provided in total, or quoted, or links given in the training outline and the attached Appendix.

STEP has worked to distill and interpret this critical information into a readily digestible form so that those working to provide housing and other residential services for persons with disabilities will have a better understanding than they have had in the past of how to apply these laws and how to become effectively involved in community action to end land use discrimination.

Funded for the two previous years by The California Endowment (TCE), STEP's original work was in San Diego County. TCE has again funded STEP from May 1, 2008 through April 30, 2010 to expand its work to the following Southern California counties: San Diego, Orange, Riverside, and San Bernardino.

SOLUTIONS FOR TREATMENT EXPANSION PROJECT (STEP)

GOAL

STEP is a community change project that seeks to reduce discrimination in land use against housing and other residential services for persons with disabilities (PWD), and to change the norms governing how treatment providers and local governments approach the land use decision making process.

ORIGINALLY, STEP WAS:

- A pilot program operating in San Diego's North and East County regions, funded by The California Endowment to facilitate better outcomes for the conditional use permit (CUP) process for residential alcohol and other drug (AOD) programs in the local governments to which they apply.
- Geared to combat neighborhood resistance by demonstrating through applied data and research that residential programs and other congregant living for AOD not only were not a threat to community health and safety, but in many instances contributed positively to their neighborhoods.
- To prepare local planning groups to advance a STEP developed addendum to the CUP application.

However, we found that our original strategies were not sufficient to support the advancing of a CUP application. Therefore, STEP has moved

- **FROM:** Beginning discussions with local decision makers about the benefits of residential AOD treatment programs to communities,
- **TO:** Changing the norm for both providers and local government decision makers as to how they approach the use permit process for residential AOD providers, through compliance with fair housing laws.
- **FROM:** Residential providers having to defend themselves against the fear mongering of local residents that pressure local governments into not siting new residential programs or approving the expansion of existing ones,
- **TO:** Changing the public dialogue to challenging local decision makers to follow the law in the ways they make land use decisions for residential services for PWD, and by building capacity among treatment providers and their advocates on how to become more engaged in community action to bring this about.

- **FROM:** A strictly AOD focus
- **TO:** A focus that encompasses other PWD

THE PROBLEM AS WE NOW DEFINE IT

- Many AOD and other providers of services for PWD are unaware that the ways in which many use permits are denied and the way other land use regulations and practices are applied by local governments are actually discriminatory and illegal.
- Providers of residential treatment and supportive housing for PWD, their advocates, and even their regulators and administrators are not well informed about how land use policies and practices are often used as barriers to establishing new programs and residences.
- Providers, advocates and their regulators and administrators need to learn about the laws that are in place to prevent land use discrimination by local governments.
- Providers, their advocates, and their regulators and administrators need to become educated about how to use the window of opportunity for community action created by California Housing Element law and to mobilize to identify and eliminate discriminatory land use regulations and practices used against residential services for PWD within California local governments.

THIS TRAINING IS DIVIDED INTO FOUR PARTS

- Data
- Land Use and Fair Housing Issues
- California Housing Element Law
- Community Action

NOTE: The information presented in this Tool Kit Training is not legal advice. It is, however, a summation of the information both learned and applied by the STEP project in its efforts to reduce discrimination in land use against persons with disabilities and to provide some tools for others to build capacity in this area.

DATA

PUBLIC PERCEPTIONS VS. EXPERIENCE & DATA ON RESIDENTIAL AOD FACILITIES

Public Perception	Experience/Data
Residential treatment programs lower property values	Licensed residential treatment Programs do not negatively impact property values
Residential treatment programs are crime magnets	Licensed residential programs are at worst crime neutral and at best crime repellants
Residential treatment programs are bad neighbors	Licensed residential treatment programs by regulation are the one neighbor on the block who is and has to be a good neighbor
Residential treatment programs attract drugs	They are drug and alcohol free

Property Values and Crime

San Diego County Data

- STEP commissioned a property values survey in SD County of 7 licensed residential AOD programs:
 - Each had a comparison area
 - Licensed realtor performed the survey
 - Results: Property values near the treatment program were:
 - Higher in 5 areas
 - The same in 1
 - Slightly lower in 1
 - Concluding these programs don't negatively impact property values
- Maps from the Automated Regional Justice Information System (ARJIS), a crime mapping data system particular to San Diego County, indicate that residential AOD programs do not attract crime. (See Appendix for Crime Maps and track your own crime data at www.arjis.org)

NOTE: The Appendix to this Tool Kit is 131 pages long and can be accessed directly at www.futuresassociates.org

- Tracked ARJIS data for several licensed AOD residential treatment facilities for eight months
- Found that even in high crime areas the programs are not crime magnets
- At best they were crime repellants and at worst were neutral
- Demonstrates that alcohol outlets are crime magnets

NOTE: According to a study of 72 CA cities, if a city of 50,000 had 100 alcohol outlets, there would be an increase of 2.7 [car] crashes for each new alcohol outlet added (*Scribner et al, "The Risk of Assaultive Violence and Alcohol Availability in Los Angeles County," American Journal of Public Health*).

- Public opinion poll commissioned through SDSU in 2003
 - 756 people in San Diego County were polled
 - 200 were selected because they lived within a half mile of a licensed residential AOD treatment program
 - Results:
 - 72% within that half mile thought such programs had a positive or at the least a neutral impact on the neighborhood
 - Only 57% of county-wide residents thought that
- Proximity Scan completed in 2007, re: concerns about "children." (See Appendix or go to http://futuresassociates.org/publications/proximity_scan.pdf)
 - We knew anecdotally that at least half of licensed residential AOD facilities, many for decades, are located immediately adjacent to or near children's services with no reported problems.
 - We proved it by surveying all 76 licensed programs in SD County.
 - There were more programs closer to children's services than we had originally anticipated.

National Data Supports and Expands on STEP Data:

- <http://www.springerlink.com/content/g0qqq03w67566482/> "There Goes the Neighborhood." Findings:
 - Projected fears about group homes damaging the community were not materialized.
 - Those who already lived near one did not perceive them a threat.
- 1)
 - Department of Psychology, George Mason University, 22030 Fairfax, VA
 - **Abstract:** *The phenomenon of resistance to the establishment of group homes for mentally ill adults is well-documented. The extent to which such homes, once established, do or do not create problems for communities is less clear. The current study examined the impressions of residents of a group home neighborhood one year or more after the establishment of the home. Forty-one residents of group home neighborhoods and thirty-nine residents of control (non-home) neighborhoods responded to a survey about their impressions of how a group home had affected or (for controls) would affect*

their neighborhoods. More than one fourth of the group home neighbors did not even know that they were living near a home. Those who did know tended to report a negligible impact of the group homes on things such as property values, neighborhood crime, resident safety, and distressing incidents in the community. Most of these residents also indicated that they were satisfied with the group home in their neighborhoods. The actual experience of group home neighbors was far more favorable than what residents of the control neighborhood anticipated, despite lack of differences in demographic characteristics or overall attitudes toward community care of mentally ill persons. Results support the view that the feared consequences of group home establishment in residential neighborhoods do not occur and that such homes may gain reasonable acceptance after they are established.

- Daniel Lauber, “Impacts on the Surrounding Neighborhood of Group Homes for Persons with Developmental Disabilities,” Governor’s Planning Council on Developmental Disabilities, Springfield, Illinois, Sept. 1986. This was one of the most extensive studies on this subject ever done. Findings:
 - Residents of group homes are much less likely to commit a crime of any sort than the average resident of Illinois.
 - The study revealed a crime rate of 18 per 1,000 people living in group homes compared to 112 per 1,000 for the general population.
- “. . . 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. Numerous studies support the conclusion that such concerns about property values are unplaced.” California AG Bill Lockyer in his letter to mayors of all California cities, May 15, 2001 (Full text of letter is in Appendix or go to http://ag.ca.gov/civilrights/pdf/reasonab_1.pdf)
- “More than 50 studies have examined their [*group homes of all kinds*] impact on property values *more than for any other small land use*. Although they use a variety of methodologies, all researchers have discovered that group homes and halfway houses do not affect property values of even the house next door. They have no effect on how long it takes to sell neighboring property, including the house next door. They have learned that these residences are often the best maintained properties on the block.” *The American Planning Association: Policy Guide on Community Residences, 1997*. (Full text can be found at:

<http://www.planning.org/affordablereader/policyguides/commres.htm>)

NOTE: No data were found substantiating *evidence* that group homes are a threat to community health and safety.

➤ **DATA CONCLUSIONS**

- There is no identified evidence that links licensed residential AOD and other licensed residential treatment programs with an increase in crime or neighborhood impairment.
- There is much evidence that licensed residential AOD treatment programs, at best, contribute to neighborhood safety and well being, and at least, have neutral impact.
- There is a preponderance of evidence that links increased levels of crime to alcohol outlets.

LAND USE AND FAIR HOUSING ISSUES

LAND USE

- Two separate categories of zoning and land use apply to
 - Residential care or treatment programs, and
 - Supportive housing (sober living, housing for mentally ill)

Residential Care or Treatment programs

- Applies to any non-medical residential setting in which treatment or care is rendered to residents to rehabilitate or to assist those who need help in maintaining daily living activities, as described in the Community Care Facilities Act. (CA Health & Safety Code 1502 (a)(1) et seq).
 - This Act was designed to assist persons with disabilities to move out of institutions and into residential settings. (CA Health & Safety Code 1566 et seq).
 - Not enough people really understand or appreciate this.
 - Results were that now these populations weren't invisible anymore, no longer tucked away in large out of the way institutions.
 - Deinstitutionalization resulted in creating a new and rapidly expanding institutional setting for PWD previously treated in health care—prison.
- These residential care or treatment programs are called “entitlement programs” because such facilities are not allowed by right, only by permit.
 - The exception applies to facilities that serve six people or fewer as they are exempt from needing permits and can exist by right (Health & Safety Code 1566.3)
 - However, facilities with six beds or fewer that provide care or treatment are not exempt from any state licensing requirements that may apply.
- The two main types of permitting that apply are Conditional Use Permits (CUP) and Variances, both requiring a lengthy and often expensive application process:

- CUP
 - Facility must meet requirements of health and safety
 - Facility must meet certain land use requirements.
 - Easier to get than a Variance
 - There is no state law that requires a CUP for residential care or treatment with 7+ beds, but many local governments require them.
- Variance
 - Hard to get
 - Must meet “hardship” criteria based on unique physical characteristics of the property

Supportive Housing

- Applies to living in a single residential dwelling unit, whether that dwelling unit is a single family home, a unit in a duplex or large apartment complex, or other form of individual housing unit.
- No treatment or care services (counseling, rehabilitation, family counseling) are given, although they may employ staff such as a cook or house manager.
- They exist by right, just as any single family dwelling unit.
- Single family dwellings are regulated under one of two different categories:
 - “Occupancy limits” and definition of “family”
 - The definition of “**family**” historically has two categories of definitions:
 - People related by blood, adoption or marriage and
 - People (adults) who were not related to each other
 - In a California 1980 case, *City of Santa Barbara v. Adamson*, the California Supreme Court ruled that no California local government could restrict the number of unrelated adults living together, based on privacy rights—that people who wanted to live together had the right to live together.
 - An example of a preferable definition of family would be “One or more persons living together as a single housekeeping unit in a dwelling unit.”
 - Some of the characteristics of “family” are listed below, but are not meant to be inclusive of all characteristics nor must all of them apply any more than they would apply to a family of related persons:
 - Rotation of chores
 - Eat evening meals together
 - Form close emotional and psychological bonds
 - Committed to each other
 - Engage in shared activities of their choosing
 - Might hire staff to help the household, such as cook, nanny, tutor, driver, or financial manager
 - Outside California, many local jurisdictions might typically define a family in the following two ways:
 - Persons living together related by blood, marriage or adoption, with no cap of the number
 - No more than five unrelated adults living together.

NOTE: Many local governments in California still have an illegal definition of family “on the books.” Even though it isn’t legally enforceable several jurisdictions try to do so.

- **“Occupancy Limits”** limit the number of people allowed per square foot regardless of their relationship to each other.
 - Since it applies equally to everyone, this definition is generally considered non-discriminatory.
 - This definition can be quite limiting to large families, so most local governments don’t use it.

KEY POINTS ABOUT SUPPORTIVE HOUSING

- No use permits are required any more than they can be required for any single family dwelling unit.
- The “six and under” law of Community Care licensing does not apply to this category of land use.
 - However there is great confusion about this among local government staff and decision makers (especially Code Enforcement), community residents and even supportive housing providers themselves.

OVERVIEW: FAIR HOUSING LAW & HOW IT IMPACTS SITING OF HOUSING AND RESIDENTIAL FACILITIES FOR PWD



- The federal Fair Housing Amendments Act of 1988 (FHAA) (See Appendix for full text of this law or go to: <http://www.usdoj.gov/crt/housing/title8.htm>) is 20 years old, yet advocacy for application of this law to housing and residential services for PWD has not yet been adequately funded and not yet reached the vast majority of those who need to be well informed, including the following:
 - Elected officials and staff
 - State and county AOD and mental health funders and administrators
 - Treatment and supportive housing providers and advocates
 - Many lawyers representing providers

- Fair housing laws are part of civil rights law.
 - Just because it is a law doesn't mean it will be followed.
 - "Right" does not drive compliance or enforcement—strategic "might" drives it.
 - Therefore, community action is essential for housing advocacy for PWD.
- Status of residential treatment and supportive housing within fair housing laws:
 - Group homes, both supportive living and entitlement programs, are considered housing.
 - The thinking behind the law and supporting case law is that these are populations who will need group housing more than others.
 - Those that are more overnight "hotel" living situation are not generally covered by fair housing laws, such as facilities with limited stays of up to seven days, or sobering stations—but they are covered by the Americans with Disabilities Act (ADA).

NOTE: The Americans with Disabilities Act (ADA) is another powerful legal tool that prohibits discrimination against PWD in a number of areas. While ADA does not cover housing per se, it complements fair housing laws in that some of the protections against discrimination it provides are for PWD in non-residential settings and in public services. There are also protections in ADA against discriminatory land use and zoning decisions made by local governments that are against the development of services for persons with disabilities. As STEP progresses in its work we will be adding more practical information on ADA laws.

- How federal fair housing laws relate to state fair housing laws:
 - The federal law, the FHAA, is considered the "floor."
 - If a state's fair housing laws offer more protections than the FHAA, the state's fair housing laws will prevail.
 - If a state's fair housing laws offer fewer protections than the FHAA, then the FHAA prevails.
 - For more information on the California Fair Employment and Housing Act, which offers more protections than the FHAA, go to:
<http://www.dfeh.ca.gov/Statutes/feha.asp>
- The FHAA defined "Disabled."
 - Specific populations are given protections from discrimination regarding their housing issues.
 - Includes substance abusers, mentally, ill, developmentally disabled, seniors, to name a few.
 - Only exclusion to substance abusers are those active in their addictions to illegal substances (See Appendix for Joint HUD/DOJ Statement—note highlighted correction on pp. 2-3 to the incorrect statement that those

convicted of manufacturing or distributing illegal substances are also excluded.)

- If those who used illegal substances are in a program of recovery they are considered protected under fair housing laws
- PWD are not a small fraction of society—comprises over 25% of the population.
- HUD recently reported that for years the greatest category of discrimination in housing was race related, but recently discrimination against the disabled has overtaken it and in increasing numbers.

NOTE: In addition to protecting PWD from housing discrimination, the FHAA also prohibits housing discrimination based on color, national origin, religion and gender.

- The FHAA Defined “Discrimination.”
 - **Discriminatory Intent**
 - **Discriminatory Impact**
 - **Failure to Provide Reasonable Accommodation**

NOTE: Discrimination can be couched in many different ways with a variety of nuances and even disguises, especially in the often difficult to navigate waters of land use. However, one key revealer is that discrimination most likely occurs when the regulation or practice focuses on the “WHO” and not the “WHAT.”

Discriminatory Intent

- Any regulation that singles out a disabled population to restrict or prohibit their housing choices in ways that don’t apply to other housing for those who are not PWD:
 - Limiting locations for housing/facilities for PWD, such as not allowing them in residential zones, or restricting them only to commercial zones
 - Limiting the amount of housing available for PWD (See Appendix for 2007 California Attorney General’s opinion on local governments attempting to limit the number of AOD facilities)
 - Requiring extra health and safety requirements, like security guards or extra lighting or fencing not required for housing not serving PWD
- Community opposition based on the “who” no matter how couched in the “what.”
 - NIMBY is a legitimate and powerful community force community members can and do use and because free speech enables citizens protections, in most instances, to say what they want.
 - However, when decision makers consider a use permit for a residential facility for PWD, according to fair housing law, they are to only act on specific *evidence*:
 - Not unsubstantiated stereotypical projections about the “who” couched in the “what.”
 - Evidence is to be specific to the provider or developer under consideration, not some provider in a galaxy far far away.

- Therefore, it can be considered a violation of fair housing laws for decision makers to use NIMBY in whole or in part to deny a use permit.
 - Fair housing case law is strongest on this point.
- So if NIMBY died 20 years ago, why is it still the most prevalent form of denying use permits?
 - Because few decision makers who *should* know about it *do* know about it.
 - Because providers have not known and, therefore, have not defended their rights.
 - Providers and advocates are considered politically weak in the political process and they historically have done little to dispel this.
- To prove discriminatory intent providers need only show that disability was one of the factors.

Discriminatory Impact

- A regulation or practice having a disparate impact on housing for persons with disabilities
- Effect, not motive, is the key
- These are not easy cases to make, fair housing attorneys say, as many factors must be examined

NOTE: Therefore, providers of housing and residential services for PWD and their advocates can use this aspect of the law in a pre-emptive community action way, rather than relying on litigation, as was done to impact the recent City of San Diego “mini-dorm” Rooming House ordinance which limits the number of leases per single dwelling unit to one per bedroom. Supportive housing for PWD relies on one person/one lease, so such regulations can serve as barriers to PWD living in such group homes.

- Working together, providers and advocates were able to effect modification in that ordinance and its administration.
 - An insertion of language in Definitions section of the ordinance that states: *Housing protected by federal or state law, including housing for persons protected under the Fair Housing Act (42 USC section 3604 (f) and the California Fair Housing Act (California Government Code section 12920 et seq.), . . . shall not constitute a rooming house.*
 - Addition of language to be publicly made available by the City (still in process): *Housing for persons with disabilities protected by the federal Fair Housing Act (42 USC Section 3604 (f) and the California Fair Housing Act (California Government Code section 12920 et Seq.), shall be exempt from this ordinance. Such housing shall include but not be limited to sober living residences and supportive housing for the mentally ill.*

Failure to Provide Reasonable Accommodation

(See Appendix for “Reasonable Accommodation—Mental Health Advocacy Services Inc. or go to: <http://www.mhas-la.org/DeveloperGuide3-9-05.pdf>)

- Reasonable accommodation (RA) is to fair housing law what reasonable modification is to ADA.
- RA means flexibility by local governments in zoning and land use re: housing and residential facilities for PWD.
- RA is a two way street:
 - Local governments need to engage in dialogue, not monologues that say “no not here, end of discussion.”
 - Providers may need to exhibit flexibility in legitimate land use issues, such as fence height, building design or size.
- Fair housing law states that local governments have an “affirmative duty” to provider RA.
 - This doesn’t mean they are mandated to have RA procedures
 - It does mean they can be in violation of the law by failing to provider RA
- There are four tests the courts use for reasonable accommodation:
 - It is for housing for PWD
 - The accommodation is necessary to make housing available to PWD, such as waiving a land use restriction such as a prohibition of such programs in a commercial zone
 - It does not place undue administrative or financial on local governments
 - i.e. such as the local government having to pay for streets widened, sewers expanded, street lights added etc.
 - It does not cost a local government anything to waive a zoning regulation.
 - The accommodation does not fundamentally alter the zoning code
 - Communities may argue that putting such programs in a residential zone changes the nature of that zone, but by and large the courts have not agreed, often stating that residential neighborhoods are where these residential programs need to be.

NOTE: It is worth noting here that the recent explosion of “six beds and under” AOD treatment facilities (largely the privately funded better capitalized programs) in contiguous properties, each licensed separately though operating as one, may be testing those bounds. It is clear that they are stretching and testing the bounds of community residents and local governments. It is a developing situation moving toward a potential “showdown.” Local governments participate in this escalation by refusing use permits to facilities seeking more than six beds.

- Among smaller programs such as six beds or fewer: There is a gradually increasing incidence of programs seeking RA in lieu of a CUP to expand to a few more beds which their facility can accommodate.
 - This may initially require the services of an attorney specializing in these issues to assist in advancing the request, but it is doable, especially in sight of the Housing Element (to be covered in later section) requirement that all local governments now have RA procedures
- Among larger programs:
 - Currently may not be able to escape the CUP process
 - Still should request RA guidelines to use in the use permit process
 - If local government doesn't have any yet, add a section in the CUP narrative for the RA request.
 - Identify the barriers, specifying why they are a barrier to this project, and ask that they be removed/waived
 - Providers still must meet basic health & safety requirements

Enforcement

- Discrimination cannot be found until the “actionable act” (point at which the aggrieved parties can take legal action) takes place, which generally occurs in a much shorter time frame in the sale, rental or lending practices of individual dwelling units, often days or weeks, than it does in the land use process required for many residential treatment facilities which often takes months and even years.
 - The actionable act in the sale, rental, or lending practices for individual housing takes place at the point that persons (protected by fair housing laws) are denied access to that housing or the loan to purchase housing because of who they are.
 - The actionable act committed by local governments regarding land use decisions for residential facilities for PWD can only legally be committed at the final stage of the decision making process by the jurisdiction's decision makers, the city council or board of supervisors.
- Suits can be brought by anyone directly impacted by the discriminatory act against PWD or those providing services for them, i.e., a provider or developer.
- Suits can be filed by
 - HUD or DOJ although the current administration does not have an impressive record of doing so.
 - Fair housing councils
 - Private attorneys in which case they are often taken on contingency

COMMUNITY ACTION NEEDED OPPORTUNITY PROVIDED HOUSING ELEMENT LAW

... Just when you thought the situation was getting hopeless. . .

Q. What is Housing Element?

A. California state law has mandated since 1969 that the governing body (city councils/boards of supervisors) of all California local governments are required to adopt a comprehensive, long-term general plan for the physical development within their respective jurisdictions. The Housing element is just one of seven mandated elements of any local government general plan. Furthermore, housing element law mandates that local governments adequately plan to meet the existing and projected housing needs of all economic segments of the community as well as meeting the housing needs of persons with disabilities. Periodically, the Legislature requires Housing Element updates from local governments to provide for citizens a certainty and predictability in land use regulations and process.

Q. What is the opportunity for community action for providers and advocates for PWD in this round of Housing Element updates?

A. These updates, to be submitted between 2008 and 2010 depending on the region (see schedule in Appendix or go to www.hcd.ca.gov/hpd/hrc/plan/he/he_time.htm), is required through the agency of SB 520. This legislation requires, in addition to several other things, that all local governments (1) identify and remove regulations that create barriers for housing for persons with disabilities, and (2) that they also implement written reasonable accommodation procedures which must be in writing, made public and have written time lines for responses. (See Appendix for memo on these mandate updates from the state Housing and Community Development (HCD) agency or go to http://www.hcd.ca.gov/hpd/hrc/plan/he/sb520_hpd.pdf)

NOTE: On page one in the above referenced memo, the two requirements to address impediments to housing for PWD are presented as an “or” rather than an “and.” The statute has since been amended to now indicate that both are required (removal of regulatory impediments *and* the establishment of RA procedures), not an either/or.

Even fair housing law doesn't require that local governments have written RA procedures. California Housing Element law is providing a window of opportunity for advancing fair housing laws at the local level.

Q. How can providers and advocates for PWD become involved?

A. There is a public process for plan update and review. To become involved take these steps:

- Contact your City Manager or County Chief Administrative Officer (or their offices) to ask them to identify by name, title and contact information the person specifically identified for development of the Housing Element update in your local jurisdiction.
- Contact the person responsible for the Housing Element (best to do this in writing—e-mail or letter) that you wish to review the Housing Element update and provide input into the process.
- In your communication stress that you are particularly interested in the two requirements about the elimination of both regulations *and* practices that are barriers to PWD and the implementation of written RA procedures mandated by SB 520.
- The more people who contact the person responsible for Housing Element stating that they are interested in these two points, the greater the visibility brought to these issues.
- In your communications you may even want to name one or two barriers you have either experienced or are aware of.

Q. What happens to local Housing Element Updates when completed?

A. They are to be submitted to HCD for review. Just because they have been submitted does not mean they will be approved. A review process is completed by HCD staff. HCD staff are required to also consider third party comments in their review. If anyone is not happy with their local government's plan they should direct their comments to the HCD staff who oversees the review process, Paul McDougall. His e-mail is: PMcdouga@hcd.ca.gov and his phone is 916.322.7995. But first, get involved locally.

Q. Some local government Housing Elements updates are due June 2008. Since we are just learning about the Housing Element requirements we haven't had the opportunity to participate in our local government's update. What can we do?

A. Identify who is in charge of your local government's housing update and ask to see a copy of what was submitted to HCD, particularly the sections on eliminating discriminatory regulations for PWD and the establishment of RA procedures. Try to get others to request a meeting with you. However you do it, request that the Housing Element update staff walk you through the process your local government used to identify and removed discriminatory barriers, or that he/she convene a meeting of others to do so if you can identify several who would like to join you. If you have trouble getting a copy at your local government level contact Paul McDougall at HCD (see above question/answer). Explain the situation and ask for an opportunity to give input into the update for your jurisdiction.

Examples of Local Government Land Use Policies and Practices that Can Be Impediments for Housing for PWD
(See Appendix for applicable sections of the Fair Housing Impediments Study—Los Angeles. For a full text of the study see:

<http://lahd.lacity.org/FairHousingImpedimentsStudy/tabid/288/Default.aspx>)

- The definition of “family” caps the number of unrelated persons who can live together in a dwelling unit.
- Not having written reasonable accommodation procedures (see Appendix for sample RA procedures—from City of Los Angeles)
- Automatically requires a CUP for more than 6 beds in a residential care or treatment facility.
- Sometimes the way the CUP process is structured creates barriers for PWD:
 - Can be quite expensive
 - Requires additional land use requirements not standard for all applicants, or when the history of that local jurisdiction’s granting/denying use permits shows a different pattern of standards for facilities for PWD not required for those that don’t serve PWD
 - Delays in time up to two years
- Requires facilities for PWD to provide things not required of other residential facilities, such as increased lighting, security guards, subject to annual reviews of the organization.
- Considers personal characteristics (the “who” not the “what”) in land use, such as:
 - Fraternities/sororities siting allowed in a zone but not allowing a similar size facility for PWD in that zone
 - In a zone that allows hospitals and nursing homes, a local jurisdiction prohibits the siting of residential facilities for PWD.
 - Allows larger size for facility for care for seniors but denies similar size AOD or mental health facility.
- Spacing requirements
 - Require spacing for residential AOD facilities when no state law requires spacing between these facilities.
 - Spacing laws occur only for PWD but not for other residential services.
 - May require stricter spacing for mental health or another PWD population licensed under Community Care than the 300 ft. requirement in state law (which the local government can, by state law, override).

- Requires a CUP and public hearing for a facility for PWD instead of a reasonable accommodation and a public notice.
- Misapplication of the “6 and under” law:
 - Supportive living for PWD told they must reduce their resident population to six or fewer or shut down
 - Supportive living told they must get licensed as a treatment facility or shut down

NOTE: Ask that training on these issues for Code Enforcement be included in the Housing Element update.

- Mischaracterizes housing or residential treatment for PWD as “boarding houses” or hotels.
- Requires a business license or that program be classified as “commercial” due to fact that they may charge fees (rent) or hire staff.
- Any regulation singling out the “who” over the “what.” For example see the following text box:

WHAT ARE THE PROBLEMS WITH THE TEXT OF THIS PROPOSED BILL, SB 2093-HUFFMAN, NOW BEFORE THE LEGISLATURE (4/24/08)?

(To amend Section 118.34.20 of CA Health & Safety Code pertaining to AOD facilities)

“For purposes of this article a facility that serves six or fewer persons shall not include a facility wherein separate buildings or portions of a residential facility are integral components of a single alcoholism or drug abuse recovery or treatment facility that serves more than six persons and all of the components of the facility are managed by the same licensee.”

Two problematic areas:

1. Opens the door to eliminate protections under state law for residential facilities with six beds or fewer and in certain instances make those facilities subject to local control.
2. Proposes to do the above *only* for facilities serving clients with AOD problems, making this bill about the “who” and not the “what.”

COMMUNITY ACTION! IF YOU DON'T . . .WHO WILL?

How to Use This Information When You Aren't an Expert

- Be confident in what you are learning: If you know the information contained in this training outline, then chances are that you know more than most people you will be talking with in local governments.
- Begin dialogues with local elected officials and planners on these issues now, not when a CUP is being advanced. The discussion will be a lot less charged.
 - Start changing the dialogue, i.e.,
 - When a decision maker (or staff) says, “yes, NIMBY is a big problem,” you can say, “yes, but it’s your problem,” pointing out the necessity for decision makers to rely only on evidence, not stereotypical and unfounded conjecture in responding to complaints by neighbors of siting a program near them.
- Give everyone the benefit of the doubt that they probably don’t know a lot of the specifics about how local governments have been discriminatory in land use decisions for housing for PWD.
- Focus on working with them to help identify and eliminate those barriers that most are unaware are indeed barriers to housing for PWD.
- Be collegial.
- Don’t be afraid to not be an expert.
 - Say you’re becoming informed.
 - Encourage local government staff to talk with the experts, such as those in Fair Housing Councils

NOTE: Not all fair housing groups are experts in this area of fair housing and land use that applies to housing and residential care for PWD. Each local government that wants to receive Community Development Block Grant (CDBG) funds is required by HUD to have a contract with a fair housing group. However, HUD does not provide criteria these contractors must meet nor a floor on the funding levels. Consequently, you will have to talk individually with each contractor to test their knowledge on these issues.

- Feel free to state that you are just learning about this and find your own way of saying that you hadn’t realized the degree to which the rights of PWD had been violated in the past, but you are aware now.

- One way we have put it is to say that we used to think that city councils and boards of supervisors were the last word in decisions on land use decision for PWD. Now we know they aren't, that the law is.
 - Or pick high profile instances in the past in which a permit was denied for reasons that appeared to be discriminatory, saying providers weren't aware of these protections in the law at that time but are now.
- Start setting the stage that your local government institute "best practices:"
 - Request that at public hearings decision makers should make public statements that while citizens are free to say what they want, as decision makers they are bound by fair housing laws to consider only specific evidence about the provider under consideration, documented proof that the particular provider is a demonstrated threat to community health and safety.
 - When local citizens protest against a housing development for PWD that is all about the "who" and not the "what," put pressure on local governments to make public statements supporting the law they are to follow.
 - Ask for training for Code Enforcement and Planning staff on these issues. Help identify experts to do so.
- Join forces with your local governments in nuisance abatement to stiffen penalties and enforcement for neighborhood problems.
 - Some sober living and other supportive living homes are not well managed and are indeed neighborhood nuisances.
 - However, residents of many private homes are not good neighbors either.
 - Demonstrate that you are willing not only to live by the rules, but will work to make the rules better apply to all.
- Get involved in the Housing Element Plan, even if your area's updates are due this June. The evaluation process extends long after the submission due date, so you can still get involved even for those local governments with a June 2008 submission date.
- Join forces with advocates and housing or treatment service providers for other PWD and work together.
 - Each will have a piece of knowledge the other doesn't have
 - For instance AOD providers have learned that many local government planners et al aren't aware that adult residential programs aren't licensed through Community Care but are licensed through the Department of Alcohol and Drugs (ADP) and therefore aren't subject to the 300 foot spacing requirement.
- Remember that most community action and policy advancement is comprised mostly of perseverance and repetition. Keep at it!

STEP will be working on mobilizing housing and residential treatment providers for PWD along with their advocates, regulators and administrators, and will provide training on how to take strategic and effective community action to end land use discrimination against PWD. This capacity building work will focus on four Southern California counties: San Diego, Orange, Riverside and San Bernardino along with the statewide organizations with services in those areas. We invite you to become involved and to be become educated. To learn how please contact Deborah Parker, STEP Project Director:

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