

# CONSENT DECREE RELATED TO R3/GROUP HOMES

State Civil Rights on its own behalf and  
the behalf of Christopher Hurst v. City  
of Avondale

# Disclaimer

- ▣ This Agreement does not constitute an admission by the City that an act or practice made unlawful by the Arizona Fair Housing Act Amendments et seq. occurred, nor should any such inference be drawn.

# Fair Housing Amendment Act

- ▣ The Fair Housing Act, Title VIII of the Civil Rights Act of 1968, prohibits discriminatory practices in housing based on race, color, sex, religion, national origin or family status. The Fair Housing Amendments Act (FHAA) was adopted by Congress in 1988 to extend protection to persons with disabilities.

# Arizona Fair Housing Act (AFHA)

- ▣ Title 41 of the Arizona Revised Statutes
- ▣ Mirrors the FHAA
- ▣ Minor differences-investigate agencies, procedure process

# Who is protected by the FHAA and the AFHA

- ▣ Any individual with a physical or mental impairment that substantially limits one or more major life activities of such individual: a record of such impairment; or being regarded as having such impairment
- ▣ Broad coverage under the FHAA
- ▣ Excluded persons

# What are the general prohibitions of the FHAA and the AFHA?

- ▣ It is unlawful:
  - To discriminate in the sale or rental, *or to otherwise make unavailable* or deny, a dwelling to any buyer or renter because of a disability of the buyer or renter, a person residing in or intending to reside in the dwelling after it is bought or rented, or any person associated with that buyer or renter
  - To discriminate against any person in the *terms, conditions, or privileges* of sale or rental of a dwelling, or in the *provision of services* or facilities in connection with such a dwelling, because of a disability of that person, a person residing in or intending to reside in the dwelling, or a person associated with that person.

# Prohibitions (cont'd)

- ❑ To refuse to permit, at the expense of the person with the disability, *reasonable modifications of existing premises* occupied or to be occupied by such person if those modifications are necessary to afford the individual full enjoyment of the premises.
- ❑ To refuse to make *reasonable accommodations in rules, policies, practices, or services* when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

# Who must comply with the FHAA and the AFHA?

- ▣ Municipalities and other local government entities are prohibited from making zoning or land use policies that exclude or otherwise discriminate against individuals with disabilities.
- ▣ FHAA does not pre-empt local law.

# Zoning and the FHAA and the AFHA

- ▣ Municipality regulations may not restrict the ability of individuals with disabilities to live in communities within the municipality.
- ▣ In reviewing zoning decisions, courts look for intentional discrimination, discriminatory classifications, disparate impact and failure to reasonably accommodate.

# Intentional Discrimination

- ▣ Land use laws, or zoning decisions based on stereotypes, fear about crime or diminution in property values, prejudice about people with disabilities or a malicious desire to discriminate.

# Intentional Discrimination (cont'd)

- ▣ *Children's Alliance v. City of Bellevue*, 950 F. 1491, 1500 (W.D. Wash. 1997)
- ▣ *Epicenter of Steubenville v. City of Steubenville*, 924 F. Supp. 845, 850-52 (S.D. Ohio 1996)
- ▣ *Dr. Gertrude A. Barber Center, Inc. v. Peters Township*, 273 F. Supp. 2d 643, 656-59 (W.D. Pa. 2003)
- ▣ *Potomac Group Home Corp. v. Montgomery County*, 823 F. Supp. 1285, 1296-97 (D. Md. 1993)

# Reasonable Accommodation

- ▣ The failure of zoning officials to make reasonable accommodations in land use policies and procedures to afford persons with disabilities an equal opportunity to use and enjoy housing will violate the FHAA.

# Reasonable Accommodation (cont'd)

- ▣ Party must request reasonable accommodation from the municipality.
- ▣ Accommodation must be reasonable and necessary to provide equal opportunity

# Reasonable Accommodation (cont'd)

- ▣ *Hovsons, Inc. v. Township of Brick*, 89 F. 3d 1096, 1103-06 (3d Cir. 1996)
- ▣ *Tsombanidis v. West haven Fire Dept.*, 325 F. 3d 565, 580 (2d Cir. 2003)

# Hurst v. Avondale

- ▣ Procedural history
- ▣ Required fire suppression system
- ▣ Failure to reasonably accommodate
- ▣ Consent Decree
- ▣ Zoning Ordinance

# Code Requirements

- ▣ **Section 421.5.2 Sprinkler Systems.** R-4 occupancies shall be provided with a sprinkler system installed in accordance with section 903.2.7. Sprinkler systems installed under this section shall be installed throughout, including attached garages and in R-4 Condition 2 facilities, and shall include attics and concealed spaces of or containing combustible materials. Such systems may not contain unsupervised valves between the domestic water riser control valve and the sprinklers. In R-4 Condition 2 occupancies, such systems shall contain water-flow switches electrically supervised by an approved supervising station and shall sound an audible signal at a constantly attended location.
- ▣ **907.2.10.1.3 Groups R-3 Residential Care Facilities and R-4.** An approved dedicated, addressable, automatic fire alarm system shall be installed throughout all areas in Group R-3 residential care facilities and R-4 occupancies in accordance with NFPA 72 and fire department policy. Automatic sprinkler system water-flow initiating devices shall activate audible alarms in accordance with section 907.10.2 and visible alarms in accordance with Section 907.10.1.4

# Applied Code Definitions

- ▣ **PERSONAL CARE SERVICE.** Assistance with activities of daily living that can be performed by persons without professional skills or professional training and includes the coordination or provision of intermittent nursing services and the administration of medications and treatments.
- ▣ **DIRECT CARE SERVICE.** Care of residents, including personal care services, who are incapable of recognizing danger, summoning assistance, expressing need or making basic care decisions.
- ▣ **SUPERVISORY CARE SERVICE.** General supervision, including daily awareness of resident functioning and continuing needs.

# Applied Code Definitions (cont'd)

- ▣ **RESIDENTIAL CARE/ASSISTED LIVING HOME.** A building or part thereof housing a maximum of 10 persons, excluding staff, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides supervisory, personal or directed services. This classification shall include, but not be limited to, the following: residential board and care facilities, assisted living homes, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse centers and convalescent facilities.
- ▣ Any occupancy type listed in I-1 with 10 or fewer residents was viewed as an R-4, occupancies in I-2 with five or fewer, considered R-3, six to ten occupants classified as R-4.

# Zoning Ordinance Changes

Revised the definition of “Family”

- ▣ One (1) or more persons occupying a single dwelling unit, provided that unless all members are related by blood, marriage or legal adoption, no such family contain more than six non-transient unrelated persons, except where disability requires that more than six unrelated persons reside together; in such cases there shall be no requirement for persons with disabilities to petition, apply or experience a process to obtain approval to live in any zoning district.

# Zoning Ordinance Changes

Revised the definition of “Dwelling or Dwelling Unit”

- ▣ A building or portion of a building used by one (1) family, as that term is defined in this section, for residential purposes as a single housekeeping unit, but not including convalescent homes, hospices, assisted living facilities, hospitals, hotels, motels and other accommodations for the transient public.
- ▣ **DWELLING UNIT.** A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

# Zoning Ordinance Changes

Deleted the definition of “Group Home for Persons with a disability” replaced with “Group Home” definition.

- ▣ Housing occupied by unrelated persons who live in a dwelling because of disability and may include staff persons, who may or may not be domiciled in the dwelling, who provide support services, including but not limited to domestic, medical, habilitation, rehabilitation, or other similar services.

# Zoning Ordinance Changes

Replaced “Handicapped” as a defined term with “Disability” as a defined term

- ▣ **Disability:** The term “disability” means, with respect to an individual (A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment. For purposes of this definition, a qualified individual with a disability shall not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the biases of such use, except as provided in 42 U. S. C. § 12210. The term “illegal use of drugs” means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act, 21 U.S.C. § 812. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law. The term, disability, shall be interpreted in a manner consistent with the definition of disability in the Americans with Disabilities Amendment Act of 2008.

# Zoning Ordinance Changes

Changed the use designation for “Group Home” in residential districts.

Land Use Matrices for single Family Districts and Multiple Family Districts and Manufactured Home Park

- ~~Permitted with Conditions (PC)~~
- Permitted (P)

# Building Changes

- ▣ We have been instructed to not enforce the R-4 requirements contained within the 2009 IBC, or any adopted code through the duration of the consent decree (Jan. 9 2015).