



IndependenceFirst

The Resource For People With Disabilities

To the Honorable Members of the
Common Council of the City of Milwaukee
City Hall, Room 205
200 E Wells Street
Milwaukee, WI 53202-3570

Re: CCFN 051412: Resolution requesting the United States Congress to pass federal legislation relating to the location of group living facilities.

Dear Members of the Common Council;

It seems that group living facilities have been a hot topic lately, with two items up for vote in the Common Council committees of Zoning, Neighborhood, and Development and of Judiciary and Legislation.

Having previously commented on the legislation in the Zoning, Neighborhood and Development Committee, IndependenceFirst is using this opportunity to comment on the resolution in front of the Judiciary and Legislation Committee. This resolution would request the United States Congress to pass legislation regarding the location of group homes.

Gentlemen, the Congress of the United States has already spoken on this matter. It is called the Federal Fair Housing Act Amendments. The Department of Justice and the Department of Housing and Urban Development issued a joint statement on this topic. It is available on the Department of Justice website, http://www.usdoj.gov/crt/housing/final8_1.htm.

The Fair Housing Act makes it unlawful --

- To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.
- To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.
- To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.

- What constitutes a reasonable accommodation is a case-by-case determination.
- Not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.

Another excerpt:

Q. What kinds of health and safety regulations can be imposed upon group homes?

The great majority of group homes for persons with disabilities are subject to state regulations intended to protect the health and safety of their residents. The Department of Justice and HUD believe, as do responsible group home operators, that such licensing schemes are necessary and legitimate. *Neighbors who have concerns that a particular group home is being operated inappropriately should be able to bring their concerns to the attention of the responsible licensing agency (emphasis mine).* We encourage the states to commit the resources needed to make these systems responsive to resident and community needs and concerns.

Regulation and licensing requirements for group homes are themselves subject to scrutiny under the Fair Housing Act. Such requirements based on health and safety concerns can be discriminatory themselves or may be cited sometimes to disguise discriminatory motives behind attempts to exclude group homes from a community....

A common issue has been the feelings of neighbors regarding group homes. The joint statement takes this into consideration both in the line I emphasized above, and in the following statement:

Q. Can a local government consider the feelings of neighbors in making a decision about granting a permit to a group home to locate in a residential neighborhood?

In the same way a local government would break the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities, a local government can violate the Fair Housing Act if it blocks a group home or denies a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers are not themselves personally prejudiced against persons with disabilities. If the evidence shows that the decision-makers were responding to the wishes of their constituents, and that the constituents were motivated in substantial part by discriminatory concerns, that could be enough to prove a violation.

As you can see, the Federal Government and the Congress has indeed spoken on the issue of locations of group living facilities. There is no need for the City to take any further action on group homes. IndependenceFirst trusts that the Committee will conclude the same, and reject the resolution.

Sincerely,



Brian Peters
Housing Program Coordinator