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Opponent for SB 316
Senate Local Government Committee
February 1, 2022

Chair McGinn and members of the committee:

My name is Kip Elliot. I am an attorney at the Disability Rights Center of Kansas (DRC). DRC is a public interest legal advocacy organization that is part of a national network of federally mandated organizations empowered by federal law to advocate for Kansans with disabilities. DRC is designated by the State of Kansas to be Kansas' protection and advocacy system. DRC is a private, 501(c)(3) nonprofit corporation, organizationally independent of state government and whose focus is the protection and enhancement of the rights of Kansans with disabilities.

I am here today to share our opposition to SB 316.

We strongly believe that SB 316 violates federal laws, including the Federal Fair Housing Act and the Americans with Disabilities Act.

In November 2016, the Department of Justice (DOJ) and the Department of Housing and Urban Development (HUD) issued a Joint Statement on state and local land use laws and practices and the application of the Federal Fair Housing Act.

DOJ and HUD are jointly responsible for enforcing the Federal Fair Housing Act (FHA), which prohibits discrimination in housing on the basis of race, color, religion, sex, disability, familial status (children under 18 living with a parent or guardian), or national origin. The FHA prohibits housing-related policies and practices that exclude or otherwise discriminate against individuals because of protected characteristics. The regulation of land use and zoning is traditionally reserved to state and local governments, **except** to the extent that it conflicts with requirements imposed by the Fair Housing Act or other federal laws.

In a community where a certain number of unrelated persons are permitted by local ordinance to reside together in a home, the proposed spacing requirement in SB 316 would violate the FHA for a local ordinance to impose a spacing requirement on group homes that do not exceed that permitted number of residents because the spacing requirement would be a condition imposed on persons with disabilities that is not imposed on persons without disabilities.

Spacing requirements violate the Fair Housing Act because they deny persons with disabilities an equal opportunity to choose where they will live. Courts have found that a spacing requirement enacted with discriminatory intent, such as for the purpose of appeasing neighbors' stereotypical fears about living near persons with disabilities, violates the Act. A neutral spacing requirement that applies to all housing for groups of unrelated persons may have an unjustified discriminatory effect on persons with disabilities, thus violating the Act. Jurisdictions must also consider, in compliance with the Act, requests for reasonable accommodations to any spacing requirements.

In 2015, the United States filed an action against the City of Beaumont, Texas alleging it violated the Fair Housing Act and the Americans with Disabilities Act when it imposed a one-half mile spacing rule that prohibited many small group homes from operating in Beaumont. The suit further sought to prohibit the city from imposing fire code requirements that exceeded those imposed by the state of Texas as part of its certification and funding of such homes.

In May 2016, the DOJ reached a $475,000 settlement with Beaumont to resolve the lawsuit. Principal Deputy Assistant Attorney General Vanita Gupta, head of the Civil Rights Division stated, "Persons with disabilities have the same right to live in and enjoy their communities as all other families do throughout our nation … the Justice Department will continue to eliminate discriminatory barriers that impede these individuals from doing so."

Gustavo Velasquez, HUD Assistance Secretary for Fair Housing and Equal Opportunity stated, "Group homes provide a critical source of housing for persons with disabilities and their availability shouldn't be limited by discriminatory practices … today's settlement reaffirms HUD and the Justice Department's commitment to ensuring that jurisdictions meet their obligation to adhere to the nation's fair housing laws."

DRC strongly believes that enacting SB 316 will open the floodgates for litigation against cities or counties that promulgate ordinances enacting a spacing requirement for group homes providing residential services to Kansans with disabilities. Kansas has come far in protecting the rights of individuals with disabilities. SB 316 is a giant step backwards and should not be passed.

Thank you for the opportunity to share our opposition to SB 316. I would be happy to stand for questions at the appropriate time.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

Washington, D.C.
November 10, 2016

JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE

STATE AND LOCAL LAND USE LAWS AND PRACTICES AND THE APPLICATION OF THE FAIR HOUSING ACT

INTRODUCTION

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the Federal Fair Housing Act ("the Act"),[1] which prohibits discrimination in housing on the basis of race, color, religion, sex, disability, familial status (children under 18 living with a parent or guardian), or national origin.[2] The Act prohibits housing-related policies and practices that exclude or otherwise discriminate against individuals because of protected characteristics.

The regulation of land use and zoning is traditionally reserved to state and local governments, except to the extent that it conflicts with requirements imposed by the Fair Housing Act or other federal laws. This Joint Statement provides an overview of the Fair Housing Act's requirements relating to state and local land use practices and zoning laws, including conduct related to group homes. It updates and expands upon DOJ's and HUD's Joint

[1] The Fair Housing Act is codified at 42 U.S.C. §§ 3601–19.

[2] The Act uses the term "handicap" instead of "disability." Both terms have the same legal meaning. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that the definition of "disability" in the Americans with Disabilities Act

Statement on Group Homes, Local Land Use, and the Fair Housing Act, issued on August 18, 1999. The first section of the Joint Statement, Questions 1–6, describes generally the Act's requirements as they pertain to land use and zoning. The second and third sections, Questions 7–25, discuss more specifically how the Act applies to land use and zoning laws affecting housing for persons with disabilities, including guidance on regulating group homes and the requirement to provide reasonable accommodations. The fourth section, Questions 26–27, addresses HUD's and DOJ's enforcement of the Act in the land use and zoning context.

This Joint Statement focuses on the Fair Housing Act, not on other federal civil rights laws that prohibit state and local governments from adopting or implementing land use and zoning practices that discriminate based on a protected characteristic, such as Title II of the Americans with Disabilities Act ("ADA"),[3] Section 504 of the Rehabilitation Act of 1973 ("Section 504"),[4] and Title VI of the Civil Rights Act of 1964.[5] In addition, the Joint Statement does not address a state or local government's duty to affirmatively further fair housing, even though state and local governments that receive HUD assistance are subject to this duty. For additional information provided by DOJ and HUD regarding these issues, see the list of resources provided in the answer to Question 27.

Questions and Answers on the Fair Housing Act and State and Local Land Use Laws and Zoning

1. How does the Fair Housing Act apply to state and local land use and zoning?

The Fair Housing Act prohibits a broad range of housing practices that discriminate against individuals on the basis of race, color, religion, sex, disability, familial status, or national origin (commonly referred to as protected characteristics). As established by the Supremacy Clause of the U.S. Constitution, federal laws such as the Fair Housing Act take precedence over conflicting state and local laws. The Fair Housing Act thus prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a characteristic protected under the Act. Prohibited practices as defined in the Act include making unavailable or denying housing because of a protected characteristic. Housing includes not only buildings intended for occupancy as residences, but also vacant land that may be developed into residences.

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is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

[3] 42 U.S.C. §12132.

[4] 29 U.S.C. § 794.

[5] 42 U.S.C. § 2000d.

2. What types of land use and zoning laws or practices violate the Fair Housing Act?

Examples of state and local land use and zoning laws or practices that may violate the Act include:

- Prohibiting or restricting the development of housing based on the belief that the residents will be members of a particular protected class, such as race, disability, or familial status, by, for example, placing a moratorium on the development of multifamily housing because of concerns that the residents will include members of a particular protected class.
- Imposing restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups of unrelated individuals, by, for example, requiring an occupancy permit for persons with disabilities to live in a single-family home while not requiring a permit for other residents of single-family homes.
- Imposing restrictions on housing because of alleged public safety concerns that are based on stereotypes about the residents' or anticipated residents' membership in a protected class, by, for example, requiring a proposed development to provide additional security measures based on a belief that persons of a particular protected class are more likely to engage in criminal activity.
- Enforcing otherwise neutral laws or policies differently because of the residents' protected characteristics, by, for example, citing individuals who are members of a particular protected class for violating code requirements for property upkeep while not citing other residents for similar violations.
- Refusing to provide reasonable accommodations to land use or zoning policies when such accommodations may be necessary to allow persons with disabilities to have an equal opportunity to use and enjoy the housing, by, for example, denying a request to modify a setback requirement so an accessible sidewalk or ramp can be provided for one or more persons with mobility disabilities.

3. When does a land use or zoning practice constitute intentional discrimination in violation of the Fair Housing Act?

Intentional discrimination is also referred to as disparate treatment, meaning that the action treats a person or group of persons differently because of race, color, religion, sex, disability, familial status, or national origin. A land use or zoning practice may be intentionally discriminatory even if there is no personal bias or animus on the part of individual government officials. For example, municipal zoning practices or decisions that reflect acquiescence to community bias may be intentionally discriminatory, even if the officials themselves do not personally share such bias. (See Q&A 5.) Intentional discrimination does not require that the

decision-makers were hostile toward members of a particular protected class. Decisions motivated by a purported desire to benefit a particular group can also violate the Act if they result in differential treatment because of a protected characteristic.

A land use or zoning practice may be discriminatory on its face. For example, a law that requires persons with disabilities to request permits to live in single-family zones while not requiring persons without disabilities to request such permits violates the Act because it treats persons with disabilities differently based on their disability. Even a law that is seemingly neutral will still violate the Act if enacted with discriminatory intent. In that instance, the analysis of whether there is intentional discrimination will be based on a variety of factors, all of which need not be satisfied. These factors include, but are not limited to: (1) the "impact" of the municipal practice, such as whether an ordinance disproportionately impacts minority residents compared to white residents or whether the practice perpetuates segregation in a neighborhood or particular geographic area; (2) the "historical background" of the action, such as whether there is a history of segregation or discriminatory conduct by the municipality; (3) the "specific sequence of events," such as whether the city adopted an ordinance or took action only after significant, racially-motivated community opposition to a housing development or changed course after learning that a development would include non-white residents; (4) departures from the "normal procedural sequence," such as whether a municipality deviated from normal application or zoning requirements; (5) "substantive departures," such as whether the factors usually considered important suggest that a state or local government should have reached a different result; and (6) the "legislative or administrative history," such as any statements by members of the state or local decision-making body.[6]

4. Can state and local land use and zoning laws or practices violate the Fair Housing Act if the state or locality did not intend to discriminate against persons on a prohibited basis?

Yes. Even absent a discriminatory intent, state or local governments may be liable under the Act for any land use or zoning law or practice that has an unjustified discriminatory effect because of a protected characteristic. In 2015, the United States Supreme Court affirmed this interpretation of the Act in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*[7] The Court stated that "[t]hese unlawful practices include zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification."[8]

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[6] *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–68 (1977).
[7] ___ U.S. ___, 135 S. Ct. 2507 (2015).
[8] *Id.* at 2521–22.

A land use or zoning practice results in a discriminatory effect if it caused or predictably will cause a disparate impact on a group of persons or if it creates, increases, reinforces, or perpetuates segregated housing patterns because of a protected characteristic. A state or local government still has the opportunity to show that the practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests. These interests must be supported by evidence and may not be hypothetical or speculative. If these interests could not be served by another practice that has a less discriminatory effect, then the practice does not violate the Act. The standard for evaluating housing-related practices with a discriminatory effect are set forth in HUD's Discriminatory Effects Rule, 24 C.F.R § 100.500.

Examples of land use practices that violate the Fair Housing Act under a discriminatory effects standard include minimum floor space or lot size requirements that increase the size and cost of housing if such an increase has the effect of excluding persons from a locality or neighborhood because of their membership in a protected class, without a legally sufficient justification. Similarly, prohibiting low-income or multifamily housing may have a discriminatory effect on persons because of their membership in a protected class and, if so, would violate the Act absent a legally sufficient justification.

5. Does a state or local government violate the Fair Housing Act if it considers the fears or prejudices of community members when enacting or applying its zoning or land use laws respecting housing?

When enacting or applying zoning or land use laws, state and local governments may not act because of the fears, prejudices, stereotypes, or unsubstantiated assumptions that community members may have about current or prospective residents because of the residents' protected characteristics. Doing so violates the Act, even if the officials themselves do not personally share such bias. For example, a city may not deny zoning approval for a low-income housing development that meets all zoning and land use requirements because the development may house residents of a particular protected class or classes whose presence, the community fears, will increase crime and lower property values in the surrounding neighborhood. Similarly, a local government may not block a group home or deny a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities or a particular type of disability. Of course, a city council or zoning board is not bound by everything that is said by every person who speaks at a public hearing. It is the record as a whole that will be determinative.

6. Can state and local governments violate the Fair Housing Act if they adopt or implement restrictions against children?

Yes. State and local governments may not impose restrictions on where families with children may reside unless the restrictions are consistent with the "housing for older persons" exemption of the Act. The most common types of housing for older persons that may qualify for this exemption are: (1) housing intended for, and solely occupied by, persons 62 years of age or older; and (2) housing in which 80% of the occupied units have at least one person who is 55 years of age or older that publishes and adheres to policies and procedures demonstrating the intent to house older persons. These types of housing must meet all requirements of the exemption, including complying with HUD regulations applicable to such housing, such as verification procedures regarding the age of the occupants. A state or local government that zones an area to exclude families with children under 18 years of age must continually ensure that housing in that zone meets all requirements of the exemption. If all of the housing in that zone does not continue to meet all such requirements, that state or local government violates the Act.

Questions and Answers on the Fair Housing Act and Local Land Use and Zoning Regulation of Group Homes

7. Who qualifies as a person with a disability under the Fair Housing Act?

The Fair Housing Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, diseases and conditions such as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV infection, developmental disabilities, mental illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

The term "major life activity" includes activities such as seeing, hearing, walking breathing, performing manual tasks, caring for one's self, learning, speaking, and working. This list of major life activities is not exhaustive.

Being regarded as having a disability means that the individual is treated as if he or she has a disability even though the individual may not have an impairment or may not have an impairment that substantially limits one or more major life activities. For example, if a landlord

refuses to rent to a person because the landlord believes the prospective tenant has a disability, then the landlord violates the Act's prohibition on discrimination on the basis of disability, even if the prospective tenant does not actually have a physical or mental impairment that substantially limits one or more major life activities.

Having a record of a disability means the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

8. What is a group home within the meaning of the Fair Housing Act?

The term "group home" does not have a specific legal meaning; land use and zoning officials and the courts, however, have referred to some residences for persons with disabilities as group homes. The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. A household where two or more persons with disabilities choose to live together, as a matter of association, may not be subjected to requirements or conditions that are not imposed on households consisting of persons without disabilities.

In this Statement, the term "group home" refers to a dwelling that is or will be occupied by unrelated persons with disabilities. Sometimes group homes serve individuals with a particular type of disability, and sometimes they serve individuals with a variety of disabilities. Some group homes provide residents with in-home support services of varying types, while others do not. The provision of support services is not required for a group home to be protected under the Fair Housing Act. Group homes, as discussed in this Statement, may be opened by individuals or by organizations, both for-profit and not-for-profit. Sometimes it is the group home operator or developer, rather than the individuals who live or are expected to live in the home, who interacts with a state or local government agency about developing or operating the group home, and sometimes there is no interaction among residents or operators and state or local governments.

In this Statement, the term "group home" includes homes occupied by persons in recovery from alcohol or substance abuse, who are persons with disabilities under the Act. Although a group home for persons in recovery may commonly be called a "sober home," the term does not have a specific legal meaning, and the Act treats persons with disabilities who reside in such homes no differently than persons with disabilities who reside in other types of group homes. Like other group homes, homes for persons in recovery are sometimes operated by individuals or organizations, both for-profit and not-for-profit, and support services or supervision are sometimes, but not always, provided. The Act does not require a person who resides in a home for persons in recovery to have participated in or be currently participating in a

substance abuse treatment program to be considered a person with a disability. The fact that a resident of a group home may currently be illegally using a controlled substance does not deprive the other residents of the protection of the Fair Housing Act.

9. In what ways does the Fair Housing Act apply to group homes?

The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. State and local governments may not discriminate against persons with disabilities who live in group homes. Persons with disabilities who live in or seek to live in group homes are sometimes subjected to unlawful discrimination in a number of ways, including those discussed in the preceding Section of this Joint Statement. Discrimination may be intentional; for example, a locality might pass an ordinance prohibiting group homes in single-family neighborhoods or prohibiting group homes for persons with certain disabilities. These ordinances are facially discriminatory, in violation of the Act. In addition, as discussed more fully in Q&A 10 below, a state or local government may violate the Act by refusing to grant a reasonable accommodation to its zoning or land use ordinance when the requested accommodation may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling. For example, if a locality refuses to waive an ordinance that limits the number of unrelated persons who may live in a single-family home where such a waiver may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling, the locality violates the Act unless the locality can prove that the waiver would impose an undue financial and administrative burden on the local government or fundamentally alter the essential nature of the locality's zoning scheme. Furthermore, a state or local government may violate the Act by enacting an ordinance that has an unjustified discriminatory effect on persons with disabilities who seek to live in a group home in the community. Unlawful actions concerning group homes are discussed in more detail throughout this Statement.

10. What is a reasonable accommodation under the Fair Housing Act?

The Fair Housing Act makes it unlawful to refuse to make "reasonable accommodations" to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others may sometimes deny them an equal opportunity to use and enjoy a dwelling.

Even if a zoning ordinance imposes on group homes the same restrictions that it imposes on housing for other groups of unrelated persons, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities. What constitutes a reasonable accommodation is a case-by-case determination based on an individualized assessment. This topic is discussed in detail in Q&As 20–25 and in the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

11. Does the Fair Housing Act protect persons with disabilities who pose a "direct threat" to others?

The Act does not allow for the exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. Nevertheless, the Act does not protect an individual whose tenancy would constitute a "direct threat" to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others unless the threat or risk to property can be eliminated or significantly reduced by reasonable accommodation. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (for example, current conduct or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate or significantly reduce the direct threat. See Q&A 10 for a general discussion of reasonable accommodations. Consequently, in evaluating an individual's recent history of overt acts, a state or local government must take into account whether the individual has received intervening treatment or medication that has eliminated or significantly reduced the direct threat (in other words, significant risk of substantial harm). In such a situation, the state or local government may request that the individual show how the circumstances have changed so that he or she no longer poses a direct threat. Any such request must be reasonable and limited to information necessary to assess whether circumstances have changed. Additionally, in such a situation, a state or local government may obtain satisfactory and reasonable assurances that the individual will not pose a direct threat during the tenancy. The state or local government must have reliable, objective evidence that the tenancy of a person with a disability poses a direct threat before excluding him or her from housing on that basis, and, in making that assessment, the state or local government may not ignore evidence showing that the individual's tenancy would no longer pose a direct threat. Moreover, the fact that one individual may pose a direct threat does not mean that another individual with the same disability or other individuals in a group home may be denied housing.

12. Can a state or local government enact laws that specifically limit group homes for individuals with specific types of disabilities?

No. Just as it would be illegal to enact a law for the purpose of excluding or limiting group homes for individuals with disabilities, it is illegal under the Act for local land use and zoning laws to exclude or limit group homes for individuals with specific types of disabilities. For example, a government may not limit group homes for persons with mental illness to certain neighborhoods. The fact that the state or local government complies with the Act with regard to group homes for persons with some types of disabilities will not justify discrimination against individuals with another type of disability, such as mental illness.

13. Can a state or local government limit the number of individuals who reside in a group home in a residential neighborhood?

Neutral laws that govern groups of unrelated persons who live together do not violate the Act so long as (1) those laws do not intentionally discriminate against persons on the basis of disability (or other protected class), (2) those laws do not have an unjustified discriminatory effect on the basis of disability (or other protected class), and (3) state and local governments make reasonable accommodations when such accommodations may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling.

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to a certain number of unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission from the city. If that ordinance also prohibits a group home having the same number of persons with disabilities in a certain district or requires it to seek a use permit, the ordinance would violate the Fair Housing Act. The ordinance violates the Act because it treats persons with disabilities less favorably than families and unrelated persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together without violating the Act as long as the restrictions are imposed on all such groups, including a group defined as a family. Thus, if the definition of a family includes up to a certain number of unrelated individuals, an ordinance would not, on its face, violate the Act if a group home for persons with disabilities with more than the permitted number for a family were not allowed to locate in a single-family-zoned neighborhood because any group of unrelated people without disabilities of that number would also be disallowed. A facially neutral ordinance, however, still may violate the Act if it is intentionally discriminatory (that is, enacted with discriminatory intent or applied in a discriminatory manner), or if it has an unjustified

discriminatory effect on persons with disabilities. For example, an ordinance that limits the number of unrelated persons who may constitute a family may violate the Act if it is enacted for the purpose of limiting the number of persons with disabilities who may live in a group home, or if it has the unjustified discriminatory effect of excluding or limiting group homes in the jurisdiction. Governments may also violate the Act if they enforce such restrictions more strictly against group homes than against groups of the same number of unrelated persons without disabilities who live together in housing. In addition, as discussed in detail below, because the Act prohibits the denial of reasonable accommodations to rules and policies for persons with disabilities, a group home that provides housing for a number of persons with disabilities that exceeds the number allowed under the family definition has the right to seek an exception or waiver. If the criteria for a reasonable accommodation are met, the permit must be given in that instance, but the ordinance would not be invalid.[9]

14. How does the Supreme Court's ruling in *Olmstead* apply to the Fair Housing Act?

In *Olmstead v. L.C.*,[10] the Supreme Court ruled that the Americans with Disabilities Act (ADA) prohibits the unjustified segregation of persons with disabilities in institutional settings where necessary services could reasonably be provided in integrated, community-based settings. An integrated setting is one that enables individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. By contrast, a segregated setting includes congregate settings populated exclusively or primarily by individuals with disabilities. Although *Olmstead* did not interpret the Fair Housing Act, the objectives of the Fair Housing Act and the ADA, as interpreted in *Olmstead*, are consistent. The Fair Housing Act ensures that persons with disabilities have an equal opportunity to choose the housing where they wish to live. The ADA and *Olmstead* ensure that persons with disabilities also have the option to live and receive services in the most integrated setting appropriate to their needs. The integration mandate of the ADA and *Olmstead* can be implemented without impairing the rights protected by the Fair Housing Act. For example, state and local governments that provide or fund housing, health care, or support services must comply with the integration mandate by providing these programs, services, and activities in the most integrated setting appropriate to the needs of individuals with disabilities. State and local governments may comply with this requirement by adopting standards for the housing, health care, or support services they provide or fund that are reasonable, individualized, and specifically tailored to enable individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. Local governments should be aware that ordinances and policies that impose additional restrictions on housing or residential services for persons with disabilities that are not imposed on housing or

[9] Laws that limit the number of occupants per unit do not violate the Act as long as they are reasonable, are applied to all occupants, and do not operate to discriminate on the basis of disability, familial status, or other characteristics protected by the Act.

[10] 527 U.S. 581 (1999).

residential services for persons without disabilities are likely to violate the Act. In addition, a locality would violate the Act and the integration mandate of the ADA and *Olmstead* if it required group homes to be concentrated in certain areas of the jurisdiction by, for example, restricting them from being located in other areas.

15. Can a state or local government impose spacing requirements on the location of group homes for persons with disabilities?

A "spacing" or "dispersal" requirement generally refers to a requirement that a group home for persons with disabilities must not be located within a specific distance of another group home. Sometimes a spacing requirement is designed so it applies only to group homes and sometimes a spacing requirement is framed more generally and applies to group homes and other types of uses such as boarding houses, student housing, or even certain types of businesses. In a community where a certain number of unrelated persons are permitted by local ordinance to reside together in a home, it would violate the Act for the local ordinance to impose a spacing requirement on group homes that do not exceed that permitted number of residents because the spacing requirement would be a condition imposed on persons with disabilities that is not imposed on persons without disabilities. In situations where a group home seeks a reasonable accommodation to exceed the number of unrelated persons who are permitted by local ordinance to reside together, the Fair Housing Act does not prevent state or local governments from taking into account concerns about the over-concentration of group homes that are located in close proximity to each other. Sometimes compliance with the integration mandate of the ADA and *Olmstead* requires government agencies responsible for licensing or providing housing for persons with disabilities to consider the location of other group homes when determining what housing will best meet the needs of the persons being served. Some courts, however, have found that spacing requirements violate the Fair Housing Act because they deny persons with disabilities an equal opportunity to choose where they will live. Because an across-the-board spacing requirement may discriminate against persons with disabilities in some residential areas, any standards that state or local governments adopt should evaluate the location of group homes for persons with disabilities on a case-by-case basis.

Where a jurisdiction has imposed a spacing requirement on the location of group homes for persons with disabilities, courts may analyze whether the requirement violates the Act under an intent, effects, or reasonable accommodation theory. In cases alleging intentional discrimination, courts look to a number of factors, including the effect of the requirement on housing for persons with disabilities; the jurisdiction's intent behind the spacing requirement; the existence, size, and location of group homes in a given area; and whether there are methods other than a spacing requirement for accomplishing the jurisdiction's stated purpose. A spacing requirement enacted with discriminatory intent, such as for the purpose of appeasing neighbors' stereotypical fears about living near persons with disabilities, violates the Act. Further, a neutral

spacing requirement that applies to all housing for groups of unrelated persons may have an unjustified discriminatory effect on persons with disabilities, thus violating the Act. Jurisdictions must also consider, in compliance with the Act, requests for reasonable accommodations to any spacing requirements.

16. Can a state or local government impose health and safety regulations on group home operators?

Operators of group homes for persons with disabilities are subject to applicable state and local regulations addressing health and safety concerns unless those regulations are inconsistent with the Fair Housing Act or other federal law. Licensing and other regulatory requirements that may apply to some group homes must also be consistent with the Fair Housing Act. Such regulations must not be based on stereotypes about persons with disabilities or specific types of disabilities. State or local zoning and land use ordinances may not, consistent with the Fair Housing Act, require individuals with disabilities to receive medical, support, or other services or supervision that they do not need or want as a condition for allowing a group home to operate. State and local governments' enforcement of neutral requirements regarding safety, licensing, and other regulatory requirements governing group homes do not violate the Fair Housing Act so long as the ordinances are enforced in a neutral manner, they do not specifically target group homes, and they do not have an unjustified discriminatory effect on persons with disabilities who wish to reside in group homes.

Governments must also consider requests for reasonable accommodations to licensing and regulatory requirements and procedures, and grant them where they may be necessary to afford individuals with disabilities an equal opportunity to use and enjoy a dwelling, as required by the Act.

17. Can a state or local government address suspected criminal activity or fraud and abuse at group homes for persons with disabilities?

The Fair Housing Act does not prevent state and local governments from taking nondiscriminatory action in response to criminal activity, insurance fraud, Medicaid fraud, neglect or abuse of residents, or other illegal conduct occurring at group homes, including reporting complaints to the appropriate state or federal regulatory agency. States and localities must ensure that actions to enforce criminal or other laws are not taken to target group homes and are applied equally, regardless of whether the residents of housing are persons with disabilities. For example, persons with disabilities residing in group homes are entitled to the same constitutional protections against unreasonable search and seizure as those without disabilities.

18. Does the Fair Housing Act permit a state or local government to implement strategies to integrate group homes for persons with disabilities in particular neighborhoods where they are not currently located?

Yes. Some strategies a state or local government could use to further the integration of group housing for persons with disabilities, consistent with the Act, include affirmative marketing or offering incentives. For example, jurisdictions may engage in affirmative marketing or offer variances to providers of housing for persons with disabilities to locate future homes in neighborhoods where group homes for persons with disabilities are not currently located. But jurisdictions may not offer incentives for a discriminatory purpose or that have an unjustified discriminatory effect because of a protected characteristic.

19. Can a local government consider the fears or prejudices of neighbors in deciding whether a group home can be located in a particular neighborhood?

In the same way a local government would violate the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities (see Q&A 5), a local government violates the law if it blocks a group home or denies a reasonable accommodation request because of neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers themselves do not have biases against persons with disabilities.

Not all community opposition to requests by group homes is necessarily discriminatory. For example, when a group home seeks a reasonable accommodation to operate in an area and the area has limited on-street parking to serve existing residents, it is not a violation of the Fair Housing Act for neighbors and local government officials to raise concerns that the group home may create more demand for on-street parking than would a typical family and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the requested accommodation, if a similar dwelling that is not a group home or similarly situated use would ordinarily be denied a permit because of such parking concerns. If, however, the group home shows that the home will not create a need for more parking spaces than other dwellings or similarly-situated uses located nearby, or submits a plan to provide any needed off-street parking, then parking concerns would not support a decision to deny the home a permit.

20. When does a state or local government violate the Fair Housing Act by failing to grant a request for a reasonable accommodation?

A state or local government violates the Fair Housing Act by failing to grant a reasonable accommodation request if (1) the persons requesting the accommodation or, in the case of a group home, persons residing in or expected to reside in the group home are persons with a disability under the Act; (2) the state or local government knows or should reasonably be expected to know of their disabilities; (3) an accommodation in the land use or zoning ordinance or other rules, policies, practices, or services of the state or locality was requested by or on behalf of persons with disabilities; (4) the requested accommodation may be necessary to afford one or more persons with a disability an equal opportunity to use and enjoy the dwelling; (5) the state or local government refused to grant, failed to act on, or unreasonably delayed the accommodation request; and (6) the state or local government cannot show that granting the accommodation would impose an undue financial and administrative burden on the local government or that it would fundamentally alter the local government's zoning scheme. A requested accommodation may be necessary if there is an identifiable relationship between the requested accommodation and the group home residents' disability. Further information is provided in Q&A 10 above and the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

21. Can a local government deny a group home's request for a reasonable accommodation without violating the Fair Housing Act?

Yes, a local government may deny a group home's request for a reasonable accommodation if the request was not made by or on behalf of persons with disabilities (by, for example, the group home developer or operator) or if there is no disability-related need for the requested accommodation because there is no relationship between the requested accommodation and the disabilities of the residents or proposed residents.

In addition, a group home's request for a reasonable accommodation may be denied by a local government if providing the accommodation is not reasonable—in other words, if it would impose an undue financial and administrative burden on the local government or it would fundamentally alter the local government's zoning scheme. The determination of undue financial and administrative burden must be decided on a case-by-case basis involving various factors, such as the nature and extent of the administrative burden and the cost of the requested accommodation to the local government, the financial resources of the local government, and the benefits that the accommodation would provide to the persons with disabilities who will reside in the group home.

When a local government refuses an accommodation request because it would pose an undue financial and administrative burden, the local government should discuss with the requester whether there is an alternative accommodation that would effectively address the disability-related needs of the group home's residents without imposing an undue financial and administrative burden. This discussion is called an "interactive process." If an alternative accommodation would effectively meet the disability-related needs of the residents of the group home and is reasonable (that is, it would not impose an undue financial and administrative burden or fundamentally alter the local government's zoning scheme), the local government must grant the alternative accommodation. An interactive process in which the group home and the local government discuss the disability-related need for the requested accommodation and possible alternative accommodations is both required under the Act and helpful to all concerned, because it often results in an effective accommodation for the group home that does not pose an undue financial and administrative burden or fundamental alteration for the local government.

22. What is the procedure for requesting a reasonable accommodation?

The reasonable accommodation must actually be requested by or on behalf of the individuals with disabilities who reside or are expected to reside in the group home. When the request is made, it is not necessary for the specific individuals who would be expected to live in the group home to be identified. The Act does not require that a request be made in a particular manner or at a particular time. The group home does not need to mention the Fair Housing Act or use the words "reasonable accommodation" when making a reasonable accommodation request. The group home must, however, make the request in a manner that a reasonable person would understand to be a disability-related request for an exception, change, or adjustment to a rule, policy, practice, or service. When making a request for an exception, change, or adjustment to a local land use or zoning regulation or policy, the group home should explain what type of accommodation is being requested and, if the need for the accommodation is not readily apparent or known by the local government, explain the relationship between the accommodation and the disabilities of the group home residents.

A request for a reasonable accommodation can be made either orally or in writing. It is often helpful for both the group home and the local government if the reasonable accommodation request is made in writing. This will help prevent misunderstandings regarding what is being requested or whether or when the request was made.

Where a local land use or zoning code contains specific procedures for seeking a departure from the general rule, courts have decided that these procedures should ordinarily be followed. If no procedure is specified, or if the procedure is unreasonably burdensome or intrusive or involves significant delays, a request for a reasonable accommodation may,

nevertheless, be made in some other way, and a local government is obligated to grant it if the requested accommodation meets the criteria discussed in Q&A 20, above.

Whether or not the local land use or zoning code contains a specific procedure for requesting a reasonable accommodation or other exception to a zoning regulation, if local government officials have previously made statements or otherwise indicated that an application for a reasonable accommodation would not receive fair consideration, or if the procedure itself is discriminatory, then persons with disabilities living in a group home, and/or its operator, have the right to file a Fair Housing Act complaint in court to request an order for a reasonable accommodation to the local zoning regulations.

23. Does the Fair Housing Act require local governments to adopt formal reasonable accommodation procedures?

The Act does not require a local government to adopt formal procedures for processing requests for reasonable accommodations to local land use or zoning codes. DOJ and HUD nevertheless strongly encourage local governments to adopt formal procedures for identifying and processing reasonable accommodation requests and provide training for government officials and staff as to application of the procedures. Procedures for reviewing and acting on reasonable accommodation requests will help state and local governments meet their obligations under the Act to respond to reasonable accommodation requests and implement reasonable accommodations promptly. Local governments are also encouraged to ensure that the procedures to request a reasonable accommodation or other exception to local zoning regulations are well known throughout the community by, for example, posting them at a readily accessible location and in a digital format accessible to persons with disabilities on the government's website. If a jurisdiction chooses to adopt formal procedures for reasonable accommodation requests, the procedures cannot be onerous or require information beyond what is necessary to show that the individual has a disability and that the requested accommodation is related to that disability. For example, in most cases, an individual's medical record or detailed information about the nature of a person's disability is not necessary for this inquiry. In addition, officials and staff must be aware that any procedures for requesting a reasonable accommodation must also be flexible to accommodate the needs of the individual making a request, including accepting and considering requests that are not made through the official procedure. The adoption of a reasonable accommodation procedure, however, will not cure a zoning ordinance that treats group homes differently than other residential housing with the same number of unrelated persons.

24. What if a local government fails to act promptly on a reasonable accommodation request?

A local government has an obligation to provide prompt responses to reasonable accommodation requests, whether or not a formal reasonable accommodation procedure exists. A local government's undue delay in responding to a reasonable accommodation request may be deemed a failure to provide a reasonable accommodation.

25. Can a local government enforce its zoning code against a group home that violates the zoning code but has not requested a reasonable accommodation?

The Fair Housing Act does not prohibit a local government from enforcing its zoning code against a group home that has violated the local zoning code, as long as that code is not discriminatory or enforced in a discriminatory manner. If, however, the group home requests a reasonable accommodation when faced with enforcement by the locality, the locality still must consider the reasonable accommodation request. A request for a reasonable accommodation may be made at any time, so at that point, the local government must consider whether there is a relationship between the disabilities of the residents of the group home and the need for the requested accommodation. If so, the locality must grant the requested accommodation unless doing so would pose a fundamental alteration to the local government's zoning scheme or an undue financial and administrative burden to the local government.

Questions and Answers on Fair Housing Act Enforcement of Complaints Involving Land Use and Zoning

26. How are Fair Housing Act complaints involving state and local land use laws and practices handled by HUD and DOJ?

The Act gives HUD the power to receive, investigate, and conciliate complaints of discrimination, including complaints that a state or local government has discriminated in exercising its land use and zoning powers. HUD may not issue a charge of discrimination pertaining to "the legality of any State or local zoning or other land use law or ordinance." Rather, after investigating, HUD refers matters it believes may be meritorious to DOJ, which, in its discretion, may decide to bring suit against the state or locality within 18 months after the practice at issue occurred or terminated. DOJ may also bring suit by exercising its authority to initiate litigation alleging a pattern or practice of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

If HUD determines that there is no reasonable cause to believe that there may be a violation, it will close an investigation without referring the matter to DOJ. But a HUD or DOJ

decision not to proceed with a land use or zoning matter does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and DOJ encourage parties to land use disputes to explore reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation or conciliation of the HUD complaint. HUD attempts to conciliate all complaints under the Act that it receives, including those involving land use or zoning laws. In addition, it is DOJ's policy to offer prospective state or local governments the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

27. How can I find more information?

For more information on reasonable accommodations and reasonable modifications under the Fair Housing Act:

- HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act, *available at* https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0 or http://www.hud.gov/offices/fheo/library/huddojstatement.pdf.

- HUD/DOJ Joint Statement on Reasonable Modifications under the Fair Housing Act, *available at* https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0 or http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf.

For more information on state and local governments' obligations under Section 504:

- HUD website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504.

For more information on state and local governments' obligations under the ADA and *Olmstead*:

- U.S. Department of Justice website, www.ADA.gov, or call the ADA information line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).
- Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*, *available at* http://www.ada.gov./olmstead/q&a_olmstead.htm.
- Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead*, *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf.

For more information on the requirement to affirmatively further fair housing:

- Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015) (to be codified at 24 C.F.R. pts. 5, 91, 92, 570, 574, 576, and 903).
- U.S. Department of Housing and Urban Development, Version 1, Affirmatively Furthering Fair Housing Rule Guidebook (2015), *available at* https://www.hudexchange.info/resources/documents/AFFH-Rule-Guidebook.pdf.
- Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Vol. 1, Fair Housing Planning Guide (1996), *available at* http://www.hud.gov/offices/fheo/images/fhpg.pdf.

For more information on nuisance and crime-free ordinances:

- Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services (Sept. 13, 2016), *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=FinalNuisanceOrdGdnce.pdf.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION NO. 1:15-cv-00201-RC
ALISSA HUMPHREY, by and through her guardian and next friend, Barbara Beauchamp, LAURA ODOM, and TODD HICKS,	§	
	§	JUDGE: RON CLARK
	§	MAGISTRATE JUDGE: ZACK HAWTHORN
	§	
	§	
Plaintiff-Intervenors,	§	
	§	
vs.	§	
	§	
CITY OF BEAUMONT, TEXAS,	§	
	§	
Defendant.	§	

CONSENT DECREE

I. BACKGROUND

1. The United States initiated this action on May 27, 2015 to enforce the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 ("FHA"), 42 U.S.C. §§ 3601-3631, and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132, and its implementing regulations, 28 C.F.R. Part 35 ("ADA"). In its Complaint, the United States alleges that the City of Beaumont, Texas ("City") violated the FHA and the ADA by 1) imposing a one-half mile spacing requirement on small group homes for persons with intellectual or developmental disabilities, and 2) imposing unjustified, heightened fire code requirements on such homes.

2. The United States alleges that the City's actions as described in the Complaint violated the Fair Housing Act, as follows: 42 U.S.C. § 3604(f)(1), by denying or otherwise making dwellings unavailable because of disability; 42 U.S.C. § 3604(f)(2), by discriminating

in the terms, conditions, or privileges of housing, or in the provision of services or facilities in connection with housing, because of disability; 42 U.S.C. § 3604(f)(3)(B), and by failing or refusing to make a reasonable accommodation in rules, policies, practices, or services, when such accommodation may have been necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling; and 42 U.S.C. § 3617, by interfering with persons in the exercise or enjoyment of, or on account of their having aided or encouraged persons with disabilities in the exercise or enjoyment of, rights granted or protected by the FHA.

3. The United States also alleges that the City violated Title II of the ADA, 42 U.S.C. § 12132, by excluding persons with disabilities from participating in and denying them the benefits of services, programs, or activities and by failing to make reasonable modifications in its rules, policies, practices, or services, which excluded persons with disabilities from participating in or denied them the benefits of services, programs, or activities. The United States further alleges that the City interfered or threatened to interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, rights protected under the ADA, in violation of 42 U.S.C. § 12203.

4. The United States further alleges that the City's conduct constitutes a pattern or practice of discrimination and a denial of rights to a group of persons that raises an issue of general public importance in violation of Section 814(a) of the FHA, 42 U.S.C. § 3614(a), or a discriminatory housing practice under Section 814(b) of the FHA, 42 U.S.C. § 3614(b).

5. On November 24, 2015, the Court granted the motion of Alissa Humphrey, Todd Hicks, and Laura Odom to intervene as of right as plaintiffs in this case. Order, ECF No. 37. Ms. Humphrey, Mr. Hicks and Ms. Odom have similarly alleged that the City violated their

rights under the Fair Housing Act and Title II of the Americans with Disabilities Act. Compl. Interv., ECF No. 38.

6. The City of Beaumont denies the claims of Plaintiff and Intervenors and denies that its ordinances, regulations and enforcement practices operate to discriminate against any person or to in any way deny the benefits of services, programs, or practices to persons with disabilities. The City has also taken the position that its one-half mile spacing rule was based on Tex. Hum. Res. Code § 123.008.

7. The United States, Plaintiff-Intervenors and Defendant desire to avoid costly and protracted litigation and have voluntarily agreed to resolve the United States' and Plaintiff-Intervenors' claims against the Defendant by entering into this Consent Decree, as indicated by the signatures below.

8. This Decree binds all parties to the full and final resolution that is described herein of all actual and potential interests, allegations, defenses, claims, counterclaims, and relating to the subject matter of the disputes that have been raised or could have been raised under the FHA and ADA.

Therefore, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

II. FACTUAL STIPULATIONS

9. The City is defined herein as its employees, boards, commissions, and members of its boards and commissions, including, but not limited to, the Department of Planning and Community Development, the Fire Department, and the Construction Board of Adjustment and Appeals.

10. The City of Beaumont is a Texas Home Rule City, created, organized and existing under Art. 11, Sec. 5, Constitution of the State of Texas. The City has the capacity to sue or be sued.

11. The City is a "public entity" within the meaning of the ADA, 42 U.S.C. § 12131(1).

12. Pursuant to Texas law,"[e]ach person with an intellectual disability has the right to live in the least restrictive setting appropriate to the persons' individual needs and abilities and in a variety of living situations, including living … in a group home ..." Tex. Hum. Res. Code § 592.013. Pursuant to this and other legal requirements, the Texas Department of Aging and Disability Services (DADS) is charged with "administering and coordinating programs to provide community based care and support services to promote independent living for populations that would otherwise be institutionalized." Tex Hum. Res. Code § 161.071(1).

13. Small group homes that serve persons with intellectual or developmental disabilities are homes for up to three or four residents (depending on the nature of the home) that are governed by 40 Tex. Admin. Code §§ 9.151 – 9.192 (Nov. 15, 2015) and are certified to operate, inspected by, and funded by DADS under the Medicaid Home-and-Community-Based Services waiver program (HCS waiver). For purposes of this Decree, such homes shall be referred to as "small group homes for persons with intellectual or developmental disabilities."

14. Small group homes for persons with intellectual or developmental disabilities include "residential support," "supervised living," and "host home/companion care" homes. See 40 Tex. Admin. Code §§ 9.154(c)(4), 9.174(a)(23). "Residential support" and "supervised living" homes may not have more than four residents with intellectual or developmental disabilities. Id. §§ 9.174(34)(A), 9.174(36)(A). "Host home/companion care" homes may not

have more than three residents with intellectual or developmental disabilities. Id. § 9.174(38)(A). DADS' certification procedures include fire safety requirements for such homes. See id. §§ 9.171, 9.178.

15. Under the State's regulations, small group homes for persons with intellectual or developmental disabilities must be located "in a home that is a typical residence within the community[.]" Id. § 9.174(a)(23).

16. Under the State's regulations, small group homes may not be any of the following: a licensed intermediate care facility for persons with intellectual or developmental disabilities; a nursing facility; a licensed assisted living facility; a licensed residential child-care operation; a facility licensed by the Texas Department of State Health Services; a facility operated by the Texas Department of Assistive and Rehabilitative Services; or a juvenile justice facility, jail or prison. Id. § 9.155(a)(5).

17. Under the State's regulations, small group homes may not be located or congregated in a manner that creates a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability, where most of the residents of the dwellings are persons with intellectual or developmental disabilities, or where homes share personnel, equipment or service facilities in order to provide routine support services to residents. Id. §§ 9.153(26)(D), 9.153(81)(D), 9.155(a)(5)(H).

18. Small group homes for persons with intellectual or developmental disabilities are "dwellings" within the meaning of 42 U.S.C. § 3602(b). Residents or prospective residents of such dwellings are persons who are "handicapped" within the meaning of 42 U.S.C. § 3602(h), and are "qualified individuals with disabilities" within the meaning of 42 U.S.C. §§ 12102 and 12131(2) and 28 C.F.R. § 35.104.

19. In February 2011, Laura Odom and Todd Hicks, two individuals with intellectual or developmental disabilities whose small group homes were the subject of code enforcement action by the City, asked the City's Zoning Board of Adjustment to waive the one-half mile spacing rule as to their apartments as a reasonable accommodation to their disabilities. The Board refused this request.

20. On or about May 31, 2011, Mr. Hicks and Ms. Odom sought a reasonable accommodation from the fire code requirements from the City's heightened fire code requirements for small group homes. They received no response to this request.

III. PROCEDURAL HISTORY

21. Ms. Odom and Mr. Hicks filed complaints with the U.S. Department of Housing and Urban Development (HUD) on or about August 8, 2011, alleging discrimination in housing on the basis of disability in violation of the Fair Housing Act. On or about July 11, 2013, HUD referred these complaints to the U.S. Department of Justice pursuant to 42 U.S.C. § 3610(e)(2).

22. Alissa Humphrey and Disability Rights Texas filed complaints with HUD on or about July 25, 2013, alleging discrimination in housing on the basis of disability in violation of the Fair Housing Act. On or about August 27, 2013, HUD referred these complaints to the U.S. Department of Justice pursuant to 42 U.S.C. § 3610(e)(2).

23. After attempting voluntary compliance, the United States filed this action on May 27, 2015. Compl., ECF No. 1. The City moved to dismiss this case under Fed. R. Civ. P. 12(b)(6) and to name the State of Texas as a required party under Fed. R. Civ. P. 12(b)(7) and 19. ECF No. 5. On January 14, 2016, the Court issued a final ruling denying this motion. Order Overruling Objections and Adopting Magistrate Judge's Report and Recommendation, ECF No. 47.

24. On February 19, 2016, the City filed a Third-Party Complaint against the State of Texas. ECF No. 61. On February 29, 2016, the United States moved to strike this complaint. ECF No. 70. On March 9, 2016, the State moved to dismiss the Third-Party Complaint. ECF No. 79. In its motion to dismiss, the State took the position that "the state statutes at issue do not require the City to take the measures challenged by the United States and the plaintiff intervenors" and that the State would not take action against the City for failing to enforce a one-half mile spacing requirement or fire code requirements. State Mot. Dismiss at 8; see also State's Reply to Mot. Dismiss at 9, ECF No. 99 ("[T]he City is not compelled by either of the state laws at issue to take any action that has the effect of excluding individuals from community-based group homes or excluding community-based group homes from Beaumont.").

IV. GENERAL NON-DISCRIMINATION PROVISIONS

25. The Defendant, its agents, employees, successors, and all persons in active concert or participation with it, shall not:

a. Discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any person because of a disability;

b. Discriminate in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, on the basis of disability;

c. Adopt, maintain, enforce, or implement any zoning or land use laws, regulations, policies, procedures or practices that discriminate on the basis of disability in violation of the FHA and the ADA;

d. Implement or administer any zoning laws, regulations, policies, procedures or practices in such a manner as to discriminate on the basis of disability in violation of the FHA and the ADA;

e. Refuse to make reasonable accommodations in the application of rules, policies, practices or services when such accommodations may be necessary to afford a person or persons with disabilities an equal opportunity to use and enjoy a dwelling;

f. Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the FHA and the ADA.

V. SPECIFIC INJUNCTIVE RELIEF

26. Immediately upon entry of this Decree, the City shall cease to enforce its one-half mile spacing rule for small group homes for persons with intellectual or developmental disabilities, and shall permit such homes to operate as a permitted use in any zoning district where families may reside in single- or multiple-family dwellings, including the following: A-R, R-S, RM-M, RM-H, RCR, RCR-H, GC-MD, GC-MD-2, and PUD. See City of Beaumont Code § 28.01.005.

27. Any new ordinance, rule, policy or practice by the City that limits or restricts the location, operation or zoning status of small group homes for persons with intellectual or developmental disabilities must be in writing and must first be submitted to and approved by the United States thirty (30) days prior to the adoption of the proposed change. Such a policy shall not contain a specific geographic limit on the location of small group homes. Such a policy shall also not prohibit small group homes from being located in multifamily residential buildings.

28. The City shall not require small group homes for persons with intellectual or developmental disabilities to comply with any fire code or fire safety requirements that are not imposed on dwellings with the same or greater number of residents without disabilities, or that are not required by DADS or any State agency with responsibility for licensing or certifying small group homes.

29. The City shall not impose any fines or penalties or otherwise initiate or pursue any enforcement action against any small group home for persons with intellectual or developmental disabilities operating prior to the effective date of this Decree, or any owners, operators, employees, staff or agents of such homes, because such homes did not have a Certificate of Occupancy from the City of Beaumont, were in violation of any one-half mile spacing rule, or were operating as a "business," were operating in a residential zoning district, and/or lacked any fire safety measure not required by DADS, the State Fire Marshal, or other State agency.

VI. REASONABLE ACCOMMODATION POLICY

30. The City shall adopt a written policy that will provide a process by which persons may request reasonable accommodations or modifications on the basis of disability from the City's zoning, land use and code requirements. Such policy shall be in substantially the same form as that contained in Attachment A, shall comply with the FHA and the ADA, shall not utilize the standards set forth in City of Beaumont Code of Ordinances § 28.02.005(e)(1), and shall include the following provisions:

a. A description of where and how the City will accept and process requests for accommodation or modification in their rules, policies, practices, or in the provision of its services;

b. The City shall provide written notification to those requesting a reasonable accommodation or modification of Defendants' decision regarding the request for accommodation or modification within twenty (20) days of the receipt of the request;

c. If the City denies a request for reasonable accommodation or modification, it shall include an explanation of the basis for such denial in the written notification;

d. The City shall maintain records of all requests for reasonable accommodation or modification and the City's responses thereto;

e. The City shall not charge a fee for requesting a reasonable accommodation or modification;

f. The City shall not impose any additional fees, costs, or otherwise retaliate against any person who has exercised his or her right under the FHA or ADA to make one or more reasonable accommodation or modification requests; and

g. The request for or denial of a reasonable accommodation shall not operate, and shall not be argued or construed by the City to operate, to bar, estop, or otherwise limit in any way the right or ability of the person or entity making the request to challenge the denial of the requested accommodation in court under the FHA, ADA or any other applicable federal, state or local laws.

VII. COMPLIANCE OFFICER

31. Within thirty (30) days after the entry of this Decree, the City shall designate an individual as the Fair Housing Compliance Officer ("FHCO"). The FHCO shall have the responsibility to receive complaints of alleged housing discrimination and disability discrimination against the City, serve as a resource to the City and its officers, elected and

appointed officials, employees, and agents on fair housing and disability rights, and coordinate the City's compliance with this Decree.

32. The FHCO shall be designated to receive and review all complaints of housing discrimination and disability discrimination made against Defendants or any officer, elected or appointed official, employee, or agent of Defendants.

33. Within thirty (30) days of receiving a complaint of housing discrimination or disability discrimination, the FHCO shall provide counsel for the United States[1] with a copy of the complaint, any documents filed with the complaint, and any written response to the complaint by the City, and shall inform counsel for the United States whether the complaint has been resolved. If the complaint has not been resolved, the FHCO shall inform counsel for the United States of any efforts Defendants undertook or plan to undertake to resolve the complaint.

34. The FHCO shall maintain copies of this Decree, the Fair Housing Policy described below, and the HUD Complaint form and HUD pamphlet entitled "Are you a victim of housing discrimination?" (HUD official forms 903 and 903.1, respectively) and make these materials freely available to anyone, upon request, without charge, including all persons making fair housing complaints to the FHCO.

35. During the term of this Decree, the FHCO shall report to the City every three months on activities taken in compliance with this Decree.

[1]All correspondence required to be sent to the United States under the provisions of this Order shall be sent to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice, Attn: DJ 175-75-94, at the following address:

Regular U.S. Mail: 950 Pennsylvania Avenue, NW – NWB
Washington, D.C. 20530
Overnight Mail: 1800 G Street, NW
Suite 7002
Washington, D.C. 20006

VIII. FAIR HOUSING TRAINING

36. Within one hundred twenty (120) days after entry of this Decree, the City shall provide training(s) on the requirements of the Decree, the FHA (in particular, those provisions that relate to disability discrimination), and the ADA (in particular, the ADA's application to zoning). The training(s) shall be provided to all City employees who have duties related to the planning, zoning, permitting construction, or occupancy of residential housing, including but not limited to: all members, staff and employees of the Zoning Board of Adjustment and the Construction Board of Adjustment and Appeals. The training(s) should be conducted in accordance with the following:

a. The training(s) shall be conducted by a qualified third party or parties, subject to the approval of the United States. The trainer(s) shall not be connected to the City or their officers, elected or appointed officials, employees, agents or counsel. No fewer than thirty (30) days before the date of each training under this paragraph, the City shall submit to counsel for the United States the name of the person(s) or organization(s) proposed to provide the training, together with copies of the professional qualifications of such person(s) or organization(s) and copies of all materials to be used in the training. Training by the U.S. Department of Housing and Urban Development shall satisfy this provision.

b. Any expenses associated with the training(s) shall be borne by the City.

c. The training(s) shall be video recorded and the City shall maintain copies of the written materials provided for each training. Each newly hired individual covered by this paragraph shall first receive training within thirty (30) days after the date he or she enters office or commences service or employment, either (1) by attending the next

regularly scheduled annual live training, if it occurs within the thirty (30) day period, or (2) by viewing avideo recording of the most recent live training and receiving copies of any written materials provided for that training.

d. The City shall provide a copy of this Decree to each person required to receive the training(s).

e. The City shall require each trainee to execute a certification confirming: i) his or her attendance; ii) the date of the training; and iii) his or her receipt and comprehension of the Decree. The Certification of Training and Receipt of Consent Decree appears at Attachment B to this Decree. All trainees shall complete the certifications at the conclusion of each training session.

37. Within one hundred twenty (120) days after the entry of this Decree, the City shall hold a one-time, live training on the requirements of the FHA (in particular, those provisions that relate to disability discrimination) for the Mayor and Council in compliance with the Texas Open Meetings Act. The trainer(s) for the live presentation shall be unconnected to the Defendant or its employees, officials, agents, or counsel. Trainer(s) and training must be approved by the United States, which approval will not be unreasonably withheld. Any expenses associated with training shall be borne by the Defendant. Training by the U.S. Department of Housing and Urban Development shall satisfy this provision. Each Councilperson shall execute a certification confirming: i) his or her attendance; ii) the date of the training; and iii) his or her receipt and comprehension of the Decree. The Certification of Training and Receipt of Consent Decree appears at Attachment B to this Decree. All trainees shall complete the certifications at the conclusion of each training session

IX. FAIR HOUSING POLICY

38. Within sixty (60) days of the date of this Decree, the City shall adopt a Fair Housing Policy. The Fair Housing Policy shall list the name and contact information for the City's Fair Housing Compliance Officer designated in accordance with Part III, above. The City shall include the Fair Housing Policy in all literature and information or application materials provided to landlords, owners and operators of group homes or other housing for persons with disabilities, and disability rights organizations. The City shall include the Fair Housing Policy as a readily accessible link on the City's website.

39. Within thirty (30) days of the date of this Decree, the City shall place the phrase "Equal Housing Opportunity" or the fair housing logo (as described in 24 C.F.R. § 110.25) on the City's website. The City shall place the same in all future published notices and advertisements related to housing or residential development.

X. REPORTING AND RECORD KEEPING

40. Within one hundred twenty (120) days after entry of this Decree, the City shall submit all executed copies of the Certification of Training and Receipt of Consent Decree (Attachment B) described in paragraphs 36(e) and 37 above, and a copy of its adopted Fair Housing Policy described in paragraph 38, above.

41. The City shall prepare compliance reports twice annually for the term of this Decree detailing all actions they have taken to fulfill their obligations under this Decree since the last compliance report. The City shall submit their first report to the United States within six (6) months after entry of the Decree, and subsequent reports every six (6) months thereafter for the duration of the Decree, except that the final report shall be delivered to the United States not less than sixty (60) days prior to the expiration of this Decree. Defendants shall include in the

compliance reports, at a minimum, the following information:

a. A summary of each zoning or land-use request or application related to group homes on which the City hase made a determination, indicating: i) the date of the application; ii) the applicant's name; iii) the applicant's current street address; iv) the street address of the subject property or proposed housing; v) The City's decision(s) regarding the matter, including any decision on appeal; vi) the reasons for each decision, including a summary of the facts upon which the City relied; and vii) complete copies of any minutes or recordings from all meetings or hearings discussing the zoning request or application;

b. Representative copies of any published notices or advertisements containing the phrase "Equal Housing Opportunity" or the fair housing logo as described in paragraph 39, above;

c. Copies of any Certifications of Training and Receipt of Consent Decree (Attachment B) described in paragraphs 36(e) and 37, above, that are signed after the preceding compliance report was issued; and

d. Copies of any materials that have been previously submitted to counsel for the United States under this Decree if such materials have been substantially altered or amended since they were last submitted to counsel for the United States.

42. For the duration of this Decree, the City shall retain all records relating to compliance with any provision of this Decree. Counsel for the United States shall have the opportunity to inspect and copy any such records after giving reasonable advance notice to counsel for the City, subject to the City's current records retention policy.

XI. COMPENSATION OF AGGRIEVED PARTIES

43. Defendant shall pay a total of FOUR HUNDRED AND THIRTY FIVE THOUSAND DOLLARS ($435,000) in monetary damages to Plaintiff-Intervenors and other persons whom the United States has determined to be aggrieved persons, as follows:

a. Within thirty (30) days of entry of this Decree, Defendant shall deliver to counsel for Plaintiff-Intervenors, with a copy to counsel for the United States, checks payable to Todd Hicks, Laura Odom, and Alissa Humphrey, or payable to a trustee or legal representative as directed by counsel, in the following amounts:

Mr. Hicks:	$60,000
Ms. Odom:	$60,000
Ms. Humphrey:	$80,000

b. Within thirty (30) days of entry of this Decree, Defendant shall deliver to counsel for the United States checks payable to persons listed in Attachment D and in the amounts listed in Attachment D for each person. The individuals listed in Attachment D are the only individuals or entities for whom the United States seeks damages under this Decree.

c. When counsel for the United States and Plaintiff-Intervenors have received checks from the City and a signed release in the form of Attachment C from each such person, counsel for the United States and Plaintiff-Intervenors shall deliver each check to each person and the original, signed releases to counsel for the City. No person shall be paid until he or she has signed and delivered to counsel for the United States and Plaintiff-Intervenors the release at Attachment C.

44. Within 30 days of entry of this Decree, Defendant shall pay a total of $25,000 in full satisfaction of all claims for attorneys' fees and costs by Plaintiff-Intervenors by delivering a check in that amount to counsel for the Plaintiff-Intervenors and payable to Disability Rights Texas.

XII. CIVIL PENALTY

45. Within twenty (20) days of entry of this Decree, the City shall pay a total of FIFTEEN THOUSAND DOLLARS ($15,000) to the United States Treasury as a civil penalty pursuant to 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest. The payment shall be in the form of an electronic fund transfer pursuant to written instructions to be provided by the United States.

46. In the event that the City, its agents, or its employees engage in any future violation(s) of the FHA or ADA, such violation(s) shall constitute a "subsequent violation" pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii).

XIII. JURISDICTION AND SCOPE

47. The parties stipulate and the Court finds that the Court has personal jurisdiction over the City for purposes of this civil action, and subject matter jurisdiction over the United States' claims in this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 3614(a) and 3614(b)(1).

48. This Decree shall remain in effect for a period of three (3) years after its entry. The Court shall retain jurisdiction over the action for the duration of the Decree for the purpose of enforcing its provisions and terms. The United States may move the Court to extend the duration of the Decree in the interests of justice.

49. Any time limits for performance imposed by this Decree may be extended or

shortened by mutual written agreement of the parties. The other provisions of this Decree may be modified by written agreement of the parties or by motion to the Court. If the modification of a provision other than a time limit for performance is made by written agreement of the parties, then such modification will be effective upon filing of the written agreement with the Court and remain in effect for the duration of the Decree or until such time as the Court indicates through written order that it has not approved the modification.

XIV. ENFORCEMENT

50. The parties shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Decree prior to bringing such matters to the Court for resolution. However, in the event of a failure by either party to perform in a timely manner any act required by this Decree, or otherwise to act in conformance with any provision thereof, either the City or the United States may move this Court to impose any remedy authorized by law or equity.

XV. COSTS AND FEES

51. Except as stated above, the parties will bear their own costs and fees associated with this litigation.

XVI. TERMINATION OF LITIGATION HOLD

52. The parties agree that, as of the date of the entry of this Consent Decree, litigation is not "reasonably foreseeable" concerning the matters described above. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described above, the party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Consent Decree.

IT IS SO ORDERED:

This _____ day of _____, 2016.

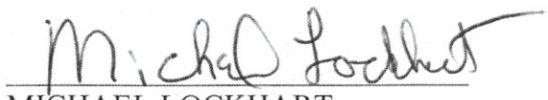
By their signatures below, the parties consent to the entry of this Consent Decree.

For Plaintiff United States of America:

LORETTA E. LYNCH
Attorney General

JOHN MALCOLM BALES
United States Attorney
Eastern District of Texas

VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division



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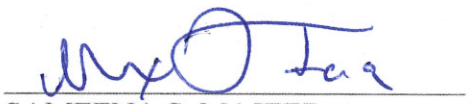

SAMEENA S. MAJEED
Acting Chief
TIMOTHY J. MORAN
Deputy Chief
MAX LAPERTOSA
AURORA BRYANT
ELISE SANDRA SHORE
ABIGAIL A. NURSE
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Civil Rights Division
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For Plaintiff-Intervenors Alissa Humphrey, Todd Hicks, and Laura Odom:

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TYRONE E. COOPER
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Tel: (409) 880-3715

KYLE HAYES
City Manager
City of Beaumont
801 Main Street
Beaumont, TX 77701

ATTACHMENT A
Reasonable Accommodation Policy

I. Introduction

It is the policy of the City of Beaumont, Texas ("City"), pursuant to the Fair Housing Amendments Act of 1988, the Americans with Disabilities Act and applicable state laws, to provide individuals with disabilities reasonable accommodations (including modifications or exceptions) in the City's zoning, land use, and other regulations, codes, rules, policies and practices, to ensure equal access to housing and to facilitate the development of housing for individuals with disabilities, or developers of housing for people with disabilities, flexibility in the application of land use, zoning, building and other regulations, policies, practices and procedures, including waiving certain requirements, when it is necessary to eliminate barriers to housing opportunities to ensure a person with a disability has an equal opportunity to use and enjoy a dwelling.

This Policy provides a procedure for making requests for accommodations in land use, zoning, building regulations and other regulations, policies, practices, and procedures of the jurisdiction to comply fully with the intent and purpose of applicable laws, including federal laws, in making a reasonable accommodation. Nothing in this Policy shall require persons with disabilities or operators of homes for persons with disabilities acting or operating in accordance with applicable zoning or land use laws or practices to seek a reasonable accommodation under this Division.

II. Publication of Policy

The City shall prominently display a notice at the counter in the Planning and Community Development Department advising those with disabilities or their representatives that they may request a reasonable accommodation in accordance with the procedures established in this Policy. A copy of the notice shall be available upon request and shall also be posted on the City's website.

III. Definitions

As used in this Policy, "person with a disability" has the meaning set forth in the federal Fair Housing Act and the Americans with Disabilities Act and is an individual who has a physical or mental impairment that limits one or more of the major life activities of such individual, is regarded as having such impairment, or has a record of such impairment.

As used in this Policy, "reasonable accommodation" means the act of making a dwelling unit or housing facility(ies) readily accessible to and usable by a person with disabilities, through the removal of constraints in the City's land use, zoning, code, permit and processing procedures. A reasonable accommodation controls over a conflicting City regulation or requirement.

For Plaintiff-Intervenors Alissa Humphrey, Todd Hicks, and Laura Odom:

CHRISTOPHER MCGREAL
RACHEL COHEN-MILLER
DISABILITY RIGHTS TEXAS
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Dallas, TX 75247
Tel: (214) 845-4056
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GARTH CORBETT
LISA SNEAD
DISABILITY RIGHTS TEXAS
2222 W. Braker Lane
Austin, TX 78758
Tel: (512) 454-4816
Fax: (512) 454-3999

SEAN A. JACKSON
DISABILITY RIGHTS TEXAS
1500 McGowen, Suite 100
Houston, TX 77004
Tel: (713) 974-7691
Fax: (713) 974-7695

IV. Requesting an Accommodation

An application for an accommodation may be made by any person(s) with a disability, his or her representative, a developer or provider of housing for persons with disabilities, or an agency that provides residential services to persons with disabilities. A request for accommodation may be submitted at any time the accommodation may be necessary to afford the person with a disability equal opportunity to use and enjoy the dwelling. A written acknowledgement of the request shall be sent to the applicant by the City within ten (10) days of receipt.

Requests for an accommodation may include a modification or exception to the rules, standards and practices for the siting, development, code enforcement, and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to a dwelling of his or her choice.

An individual requesting an accommodation shall direct the request to the Director of the Community Planning and Development Department, orally, which shall be transcribed by the City into writing if requested by the applicant, or in writing. The individual shall submit an application for a reasonable accommodation using the appropriate City form, to be provided by the City. The City shall assist the applicant with furnishing all information maintained by the City with respect to an accommodation. The applicant shall provide the following:

1. Name and address of the person or entity requesting accommodation. If the applicant is applying on behalf of a person with a disability, the name and address of the person with a disability shall also be provided. The accommodation need not be on behalf of a specific person with a disability, as long as the person requesting the accommodation verifies that the housing is intended for the use of persons with disabilities.

2. Address of the property for which the accommodation is requested.

3. Indication of whether that the applicant is (a) a person with a disability, (b) applying on behalf of a person with a disability, (c) a developer or provider of housing for one or more person(s) with a disability, or (d) a provider of residential services for a person with a disability.

4. Description of the disability at issue, the requested accommodation, and the specific regulation(s), policy, practice or procedure for which the accommodation is sought. In the event that the specific individuals who are expected to reside at the property are not known to a provider in advance of making the application, the provider shall not be precluded from filing the application, but shall submit details describing the range of disabilities that prospective residents are expected to have to qualify for the housing.

5. Description of whether the specific accommodation requested by the applicant is necessary for the person(s) with the disability to use and enjoy the dwelling, or is necessary to make the provision of housing for persons with disabilities financially or practically feasible.

Any personal information regarding disability status identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant and/or person with a disability and shall not be made available for public inspection unless required by the Texas Public Information Act. Any information received regarding the disability status identified, including but not limited to medical records, will be returned to the applicant within ten (10) days of the decision of the City Manager's designee. The Applicant need provide only the information necessary for the City to evaluate the reasonable accommodation request.

If the person with the disability needs assistance to make a request for accommodation, the City will provide assistance, including transcribing a verbal request into a written request. The applicant shall sign or indicate in writing that the transcription is accurate.

A fee shall not be required for an application for an accommodation.

V. Review of Reasonable Accommodation Request

The Director of the Department of Community Planning and Development, or the Director of the City department or division responsible for overseeing the ordinance, rule, code, policy or practice that is the subject of the reasonable accommodation request ("Director"), shall issue a written decision on a request for accommodation within thirty (30) calendar days of the date of the application, and may either grant, grant with alterations or conditions, or deny a request for an accommodation in accordance with the required findings set forth below.

If necessary to reach a determination on the request for accommodation, the Director may request further information from the applicant consistent with applicable laws, specifying in detail the additional information that is required. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry. (*See* Joint Statement of The Department of Housing & Urban Development & The Department of Justice: Reasonable Accommodations Under the Fair Housing Act #18.) Any personal information related to the disability status identified by the applicant as confidential shall be retained in a manner so as to protect the privacy rights of the applicant and shall not be made available for public inspection unless required by the Texas Public Information Act. Any information received regarding the disability status identified, including but not limited to medical records, will be returned to the applicant within ten (10) days of the decision of the City Manager's designee. If a request for additional information is made, the running of the thirty (30) calendar day period to issue a decision is stayed until the applicant responds to the request.

The written decision to grant, grant with alterations or conditions, or deny a request for accommodation shall be based on the following factors to the extent they are consistent with applicable laws:

1. Whether the housing that is the subject of the request for accommodation will be used by a person with a disability protected under the applicable laws.

2. Whether the requested accommodation is necessary to make a dwelling available to a person with disabilities protected under the applicable laws.

3. Whether the requested accommodation would pose an undue financial or administrative burden on the City. The determination of undue financial and administrative burden will be done on a case-by-case basis. A finding of "undue financial or administrative burden" shall not be based on whether the requested accommodation would provide a preference or permit the housing in question to not comply with otherwise-applicable laws, ordinances, rules, codes, policies or practices that others must obey.

4. Whether the requested accommodation would require a fundamental alteration in the nature of a City program or law, including but not limited to zoning and land use. A finding of "fundamental alteration" shall not be based on whether the requested accommodation would provide a preference or permit the housing in question to not comply with otherwise-applicable laws, ordinances, rules, codes, policies or practices that others must obey.

In making findings, the Director may grant with alterations or conditions, reasonable accommodations, if the Director determines that the applicant's initial request would impose an undue financial or administrative burden on the City, or fundamentally alter a City program or law. The alterations or conditions shall provide an equivalent level of benefit to the applicant with respect to (a) enabling the person(s) with a disability to use and enjoy the dwelling, and (b) making the provision of housing for person(s) with a disability financially or practically feasible.

The written decision of the Director on an application for an accommodation shall explain in detail the basis of the decision, including the Director's findings on the criteria set forth below. All written decisions shall give notice of the applicant's right to appeal and to request assistance in the appeal process as set forth in this Policy. The notice of the decision shall be sent to the applicant by certified mail and electronic mail, if the applicant's electronic mail address is known to the City.

Nothing herein shall prohibit the applicant, or persons on whose behalf a specific application was filed, from reapplying for an accommodation based on additional grounds or changed circumstances.

If the Director fails to render a written decision on the request for accommodation within thirty (30) days, the accommodation request shall be deemed granted.

VI. Appeal

An applicant, or a person on whose behalf an application was filed, may appeal the written decision to deny or grant an accommodation with alterations or conditions or a denial of the accommodation no later than thirty (30) calendar days from the date the decision is mailed.

An appeal must be in writing (or reduced to writing as provided below) and include grounds for appeal. Any personal information related to the disability status identified by the applicant as confidential shall be retained in a manner so as to protect the privacy rights of the applicant and shall not be made available for public inspection unless required by the Texas Public Information Act. Any information received regarding the disability status identified, including but not limited to medical records, will be returned to the applicant within ten (10) days of the decision of the City Manager's designee.

If an applicant needs assistance appealing a written decision, the City will provide assistance transcribing a verbal request into a written appeal to ensure that the appeals process is accessible. The applicant shall sign or indicate in writing that the transcription is accurate.

An applicant shall not be required to pay a fee to appeal a written decision.

An appeal will be decided by the City Manager or his designee. In considering an appeal, the City Manager shall consider (a) the application requesting the accommodation, (b) the Director's decision, (c) the applicant's written statement of the grounds of the appeal, and (d) the provisions of this Policy, in order to determine whether the Director's decision was consistent with applicable fair housing laws and the required findings in this Policy.

If a written decision on the appeal is not rendered within thirty (30) calendar days from the date the appeal is received, the requested accommodation shall be deemed granted.

The decision of the City Manager or his designee shall constitute the City's final determination on the request for reasonable accommodation.

VII. Other provisions

A request for accommodation shall stay any and all proceedings, including Municipal Court proceedings, in furtherance of the enforcement of any requirement that is the subject of the request. An accommodation request does not affect an applicant's obligation to comply with other applicable regulations not at issue in the requested accommodation.

The City shall retain, for the duration of the accommodation and at least five (5) years thereafter, written records of each request and all related records, including the City's responses and decisions.

The person or entity requesting an accommodation may file an action at any time in court to challenge the City's denial of a reasonable accommodation under the Fair Housing Act, the

Americans with Disabilities Act and/or any other applicable federal, state or local law. Such persons or entities shall not, solely by virtue of having requested an accommodation under this Policy, be barred, estopped or otherwise limited in bringing an action in court against the City to challenge the denial of a reasonable accommodation.

ATTACHMENT B
Certification of Training and Receipt of Consent Decree

On _____, I attended training on the Fair Housing Act and Titles II and V of the Americans with Disabilities Act. I have had all of my questions concerning these topics answered to my satisfaction.

I also have been given and I have read copies of the Fair Housing Act, the Americans with Disabilities Act, and the Consent Decree entered in United States v. City of Beaumont, Civil No. 1:15-CV-00201-RC (E.D. Tex.). I understand my legal responsibilities and will comply with those responsibilities.

_____
Signature

_____
Print Name

_____
Position with City of Beaumont

_____
Business Address

_____
Business Address Continued

_____
Business Telephone Number

_____
Date

ATTACHMENT C
Release

In consideration for the parties' agreement to the terms of the Consent Decree entered in United States v. City of Beaumont, No. 1:15-cv-00201 (E.D. Tex.), and the City's payment to me of $_____, pursuant to the Consent Decree, I hereby agree, effective upon receipt of payment, to hereby release and forever discharge the City of Beaumont, along with its principals, predecessors, successors, insurers, agents, directors, officers, employees, former employees, administrators, assigns, and any person acting under its direction or control, from any and all claims, costs, and expenses, including attorney's fees, that I have or may have had against the City of Beaumont for any of its actions through the date of entry of the Consent Decree. This Release includes, but is not limited to, all fair housing and/or Americans with Disabilities Act claims set forth or which could have been set forth, in the Complaint in this lawsuit and any other claims that I may have had against the City of Beaumont for any of its actions through the date of the entry of the Consent Decree. I hereby acknowledge that I have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.

Executed this _____ day of _____, 2016.

_____
Signature

_____
Print Name

_____
Address

_____
Address Continued

ATTACHMENT D
List of Other Aggrieved Persons

Barbara Beauchamp	$10,000
John Franks	$15,000
Connie and Ronald Lee	$30,000
James Leysath	$50,000
Jan Leysath	$35,000
Lynette McCreary	$25,000
Arvy McKinney	$30,000
Christel Wise	$40,000