May 14, 2014

VIA EMAIL AND U.S. MAIL

Deborah A. Raber, Planning Project Manager
City of Hillsboro
150 East Main Street
Hillsboro, OR 97123

Re: Second Draft of Proposed Changes to City of Hillsboro’s Community
Development Code

Dear Ms. Raber,

Housing Land Advocates is a nonprofit group that encourages land use policies
supporting affordable housing and the development of sustainable communities. In addition to
the comments that Fair Housing Council of Oregon (FHCO) submitted with the joint effort of
Housing Land Advocates (HLA), this letter provides a closer look into the code language that
HLA finds problematic in the current draft. HLA hopes that these comments will assist the City
in identifying specific problems we have with the proposed code amendments for people with
disabilities and people of color, both protected under the Fair Housing Act. Disability Rights of

As FHCO stated in its letter, HLA hopes this is the beginning of the conversation. While
this letter aims at a comprehensive look at the problems HLA identified, it may suffer from lack
of clarity because the code amendments themselves lack clarity.

Overall, HLA recommends the following changes to the code:

- Eliminate categories of permitted or non-permitted uses within single family residential zones
  based upon the disability status of the residents.
- Eliminate “household”, and “group living” definitions that have no relationship to the size or
  character of the residential dwelling unit and that function as a significant limitation on housing
  opportunities for people with disabilities.
- Revise to include only one definition of “household” inclusive to the definition of family and
  place a consistent maximum number of residents for all persons, to at least eight, if not more.
- Include residential housing for up to eight people with disabilities as permitted use within single
  family zones where the disabled residents live together as one household.
- Eliminate the inclusion of employees in density calculations when the employee is present in the
  dwelling unit based upon a disability related need of the primary resident. The CDC should not
  count live-in caregivers in the total number of residents in a household.
- Eliminate the requirement that a household of up to eight persons with disabilities must apply for
  a reasonable accommodation where the non-permitted status of such a household is facially

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1 Although this letter is framed within the context of the Fair Housing Act, many of the concerns relate to
violations of the Americans with Disability Acts.
discriminatory. The requirement of a reasonable accommodation application in this specific context is an unnecessary and burdensome procedural barrier to housing for people with disabilities.

- Eliminate arbitrary use of occupancy for group living in all zones as a basis for number of units allowed.
- Change the method of density calculation to treat all residential dwellings the same for the purposes of density, regardless of the nature of the residents and to include secondary dwelling units in density calculations.
- Revise the reasonable accommodation process including the requirement to obtain reasonable accommodation when the basis for the exclusion (and need for reasonable accommodation is itself based on disability and removal of the language regarding the authority of subsequent director to revoke a previous director’s grant of reasonable accommodation; and eliminate method of density calculation based upon the disability status of the residents and any employees necessary for the disabled residents to live within the household. The proposed density calculation is facially discriminatory in that it treats housing for people with disabilities differently than housing for non-disabled residents and there is no rational basis for the distinction.

These recommendations are discussed in greater detail below.

I. Contradicting Definitions Lead to Violations of the Fair Housing Laws.

The second draft of the CDC provides updated definitions under CDC 17.01.500 that do not match each other and fail to reference one another.

- “Group living” is defined as 6 or more unrelated residents, excluding residential homes and residential facilities. The “group living” definition makes no reference to the definition of “household” as a potential exception.
- The definition of “household” leads with 5 or fewer unrelated people in a dwelling unit, except for group living of disabled persons with the limitation of 8 or fewer.
- “Family” is any number of relatives plus three (+3) in a dwelling unit.

These various definitions, with blatant differential treatment of people based on disability status violate the Fair Housing Act Amendments (FHAA). ²

In addition, ambiguity and inconsistency in the CDC allows for denials and appeals by opposition to be based on discriminatory motivations. The failure to simplify and integrate the definitions of household, group living, and density calculations in the definitions section will lead to different interpretations by the staff charged use of the new CDC. For example, a staff member, looking at the definition of group home, could find “group living” and tell the residential home of 6 disabled residents that it is not allowed in a residential zone.

The purpose of living within a single family zone as a household is to integrate disabled persons into the community while providing support, where necessary, to the residents. By distinguishing between households and “disabled” households, the second CDC draft treats residential homes for disabled individuals differently than residences for non-disabled persons.

² See section III infra. for a more complete explanation of the bases for FHAA violations.
For those group living facilities in all single family zones (SFR), a group living facility may only be permitted with a Director’s Reasonable Accommodation. This requires residential households for disabled individuals, as a matter of public record, to identify themselves as disabled households. In contrast, residential housing for non-disabled persons, “households” of up to five unrelated individuals or secondary dwelling units with up to three unrelated households, are permitted as of right and need not participate in any public administrative process that would identify both the location of the residence and the disability status of the residents.

Residential housing for people with disabilities, to be fully integrated into their communities, requires the same manner of treatment as any other residential home within the zone. For the sake of consistency and equal treatment in the zoning code, the definition of “group living” should be eliminated from the draft and the definition of “household” should be revised to at least 8 unrelated individuals, consistently throughout the definitions and code.

II. The Count of Live-in Caretakers in Group Living as Members of Households is Facially Discriminatory.

The code requirement to count live-in caretakers in group living towards the household limit but not count employees of other homes is facially discriminatory. Compare CDC 17.10.120 describing that in group living situations, the live-in caretakers are counted towards the density calculation with CDC 17.01.500’s definition of family where three additional persons, excluding live-in employees are permitted to live together in a dwelling unit without violating code provisions. If live-in employees of non-disabled persons are not counted towards the maximum members of a home, then live-in caregivers should also not be counted towards the maximum number of residents. The definitions must be changed so that live-in caregivers are not counted towards the household limits.

III. Calculation of the Number of Units Allowed in a Zone is Based on Differential Treatment for People with Disabilities.

The definition of “Group Living” and how the number of allowable units is calculated leads to several problematic scenarios, including facial discrimination. Under CDC 17.10.120 the code states:

“Group Living is characterized by the residential occupancy of a structure in a residential, mixed use or commercial setting by six or more persons who are not a family or household as defined in Section 17.01.500. Persons in group living may, or may not,
receive care, treatment or training that is not licensed or certified by the State. Group Living uses may have common facilities for dining, socializing, recreation, laundry or other activities. Where applicable, density for Group Living is calculated at the equivalent of four persons equaling one dwelling unit. Live-in caretakers, residential managers and similar individuals are included in this density calculation. Group Living may be subject to approval through the Conditional Use process as specified in Section 17.80.020.” (emphasis added).

On its face, the definition of density as four disabled people to constitute a dwelling unit, it facially discriminatory,

In addition, HLA finds the emphasized language problematic in its application of occupancy to determine the number of units allowed in a zone, rather than use of square footage. For example, in the MFR-1 zone, under CDC Table 17.22.130-1, the number of group living units is calculated at 4 person equivalent to one dwelling. Meanwhile, the number of detached single-family, two-dwelling townhouse or duplex, or three dwelling townhouse units are calculated by minimum lot sizes without regard to the number of people living in a dwelling. See Table 17.122.150-1. Nowhere does a developer of these latter types of dwellings have to disclose the number of residents in each unit. This differential treatment is inexplicable.

Further, all residential households should be treated the same for the purposes of determining the number of units permitted. The number of units should be based on the number of permissible lots within a specific zone and not calculated based upon the disability status of residents in any residential home, and how many disabled and able-bodied people may live in a single unit.

IV. Disparate Impact and Disparate Treatment

In FHCO’s June 2013 letter the Hillsboro Planning Commission was informed of the disparate impact theory that can be raised under the Fair Housing Act. To be clear, HLA is also concerned that some of the proposed revisions to the CDC are facially discriminatory, specifically and purposefully target disabled persons for different treatment. The Hillsboro Planning Department acknowledged in the April 23, 2014 letter that the reduction in household size was intended to “conform the ordinance to the state law definition of residential homes,” a law that only concerns licensed and state regulated group homes for disabled persons. However, there is nothing in state law which justifies the elimination of housing for persons with disabilities within single family residential zones. Even if there were, the City could not rely upon it where it would violate federal and state fair housing law.

A. The City’s Treatment of Disability Violates The Fair Housing Act.

The Federal Fair Housing Act, as amended (FHAA), Oregon Fair Housing statutes and ORS 197.660-197.670, the sections concerning residential homes and residential facilities, have to be read in conjunction, not as the state law replacing the federal law. States and the federal government can provide different protections to its citizens regarding the same subjects. Both state and federal laws must be read together and each statute provides a minimum protection to its citizens, not a maximum protection. This means that if federal laws protect disabled people,
but state law does not, disabled persons of that state are still protected. Conforming a development code to one state law does not protect against violations of other federal laws, the FHAA or state laws. State law is not a safe harbor.

The FHAA and ORS 659A.145 require that disabled persons be treated the same as non-disabled persons in housing transactions. Under ORS 197.660-197.670 the state allows licensed group homes of 5 or fewer disabled persons in any residential zone. The statute further prohibits the City from placing extra zoning restrictions on such group homes and requires that five-in-caregivers not be counted towards the residents count. The state further requires that “residential facilities,” defined as licensed group homes of 6-15 disabled persons be treated the same as other multifamily homes. These state statutes were enacted in 1989 at the heels of the changes to the Fair Housing Act. The legislative finding under ORS 197.663 states that disabled persons often need to live in groups, that they have difficulties finding locations for their homes and that integration into the community is important. Compliance with the state statute does not replace or cover the FHAA protections.

Hillsboro has many residential households composed of persons considered disabled under FHAA that are not required to be licensed or regulated by the state. Such households often consist of disabled persons with a high degree of self-care. For this group of disabled individuals, residential living provides therapeutic support or other benefits and do not require state intervention or oversight. Some types of unlicensed group homes include supported housing such as the housing provided by Luke-Dorf, sober housing such as Oxford Homes, and many more. As a result, the current draft continues the facially discriminatory distinctions and treatments found in the first proposed draft. Simply put, fair housing protections afforded to disabled persons must be extended to all residential housing for disabled persons regardless of the state’s licensing or regulatory requirements.

**B. The City’s Proposed Reasonable Accommodation Process is Flawed.**

The City establishes a reasonable accommodation process under CDC 17.80.050. On its face, a reasonable accommodation policy is a positive policy to have within a development code. However, in this specific context, it functions as an unnecessary and burdensome procedural barrier for housing for people with disabilities. Where the housing for which the accommodation is sought is a non-permitted use because of facially discriminatory code language, the option of applying for a reasonable accommodation does not validate the discriminatory bar to that housing. It is clear that housing for disabled persons must be treated equally as similarly situated housing for non-disabled persons. A requirement for an application for reasonable accommodation is valid only for those code provisions that apply equally upon all similarly situated housing. A requirement for an application for reasonable accommodation, for a variance in the code restrictions that apply specifically and only to housing for people with disabilities, is itself an invalid and discriminatory requirement.

Once a reasonable accommodation request is submitted, this should be the beginning of an interactive dialogue between the applicant and the Director. There is no provision within the
policy that there will be the opportunity for a dialogue process once the Director has made an initial determination.

Further, a residential use, approved through a reasonable accommodation process should exist at least as long as the need for the accommodation exists. In the absence of evidence that the disability related need for the accommodation no longer exists, no future director or administrator could be allowed to reconsider or revoke it. In essence, the draft reasonable accommodation policy is nothing more than conditional approval of an applicant’s request for an accommodation. A conditional approval, subject to revocation in the future for unknown reasons or justifications, is not an approval and may, in fact, subject the City to liability for “otherwise denying housing” in the future. The households’ reliance on the reasonable accommodation should preclude a subsequent director from disrupting and effectively evicting disabled persons from their homes.

C. Examples of Disparate Impact.

The main concern in the City’s April 23, 2014 response letter to FHCO and others appears to be that FHCO did not provide enough examples or evidence of disparate impact in FHCO’s June 13, 2013 letter.

The following are examples of households not allowed in single-family residential zones (houses) with the current family, household and group living definition:

1. A house of 6 refugees/immigrants that are unrelated sharing a 3-6 bedroom house
2. Supportive housing for persons in an unlicensed group home with 6 residents, two staff.
3. A house of 6 religious practitioners that wish to live together as part of their religion.
4. Two married couples who are friends, each with two children, sharing a 4 bedroom house and household expenses.
5. A house of 6 unrelated persons, and 2 of whom are disabled (such as veterans, persons on SSI or SSD, etc.).
6. Under the current CDC draft, up to eight unrelated individuals may reside in a primary residence that includes a secondary dwelling unit on the same lot. However, eight disabled individuals are prohibited from living within a primary residence. There is no rationale distinction between the two scenarios defined by the draft code.

The above-listed examples are only a few of the incongruous results of the current draft of the CDC.

V. The City May Not Hide Behind Preservation of Single Family Dwelling Zones to Enable Discrimination.

Cities are permitted to use their zoning to protect and enhance the character of single family dwelling zones and neighborhoods. But, what a city may not do is use assumptions about the threats or dangers of a certain class of people. Even assuming possible non-discriminatory intent, the most common concerns are addressed below:
A. Overcrowding.

Under federal and state fair housing law, occupancy standards based upon state and local health and safety codes may limit the number of occupants within a dwelling. Under health and safety codes, the maximum number of person allowed in a residence is usually determined by the habitable space excluding kitchen, bathroom, hallways etc. in relation to the square footage of the dwelling. The minimum occupancy standard that a landlord may ordinarily apply is two persons per bedroom and landlords are encouraged to consider what would be reasonable beyond that point such as if there is a very large bedroom or other habitable space that may be used as a bedroom.\(^6\) This means, that at minimum, the CDC should anticipate that the occupancy of any dwelling unit has at least the potential of two persons per bedroom, if not more.

The draft CDC provision limiting residential housing for five unrelated persons violates the state and Fair Housing Act in that it is an unlawful occupancy standard in that it is not based upon any lawful state or local health or safety code. Moreover, limiting occupancy of a three or more bedroom house to no more than five would cause a landlord to have to choose between violating ORS 90.262 or the CDC. ORS 90.262 is the occupancy standard, which requires the owner/landlord to rent to a group of at least six residents if they applied. However, if the landlord allows that group to rent the home, that owner/landlord would be violating the CDC, because the CDC prohibits renting such a home to more than five unrelated individuals or six disabled individuals.

Hillsboro specifically has many single family homes with 3+ bedrooms. A quick Craigslist search on April 29, 2014 for homes for rent or sale comprised of 3 bedrooms or more yielded over 130 results. A refined search of homes for 4 or more bedrooms in Hillsboro on that day yielded 45 homes available. Attached are Craigslist ads for a few homes that were available for rent as of April 29, 2014 as examples of 4 and 5 bedroom houses. All of the houses are located in either what are currently listed as R7 or R10 zones. “Group living” would be specifically banned from these zones despite the dwelling’s obvious ability to house at least 8-10 people pursuant to ORS 90.262.

B. National Origin & Density

The decrease in allowed household size in a single-family zone from eight to five is a move towards decreased density. As the population of Hillsboro grows and the need for density becomes necessary and more and more desirable, the current lack of density does have a disparate impact on Hillsboro’s minority communities. Compare, by way of example, Census block 410670324041 (hereinafter “41”) with Census block 410670324091 (hereinafter “91”).

Block 41 is centered at approximately SE 40th Ave & SE Hemlock and is a single family

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\(^6\) ORS 90.262 (3) If adopted, an occupancy guideline for a dwelling unit shall not be more restrictive than two people per bedroom and shall be reasonable. Reasonableness shall be determined on a case-by-case basis. Factors to be considered in determining reasonableness include, but are not limited to: (a) The size of the bedrooms; (b) The overall size of the dwelling unit; and (c) Any discriminatory impact on those identified in ORS 659A.421.
residential zone, currently R10 & R7 zone. Block 41 had a Latino population of only 1.62% in the 2010 census. Compare that with block 91 which is centered at approximately SE 13th & SE Walnut. Block 91 is a multifamily zone and 81.2% of its population was Latino in the 2010 census. Higher density zoning absolutely has an impact on the national origin of the neighborhood. A move towards lower density has a disparate impact on national origin.

VI. Conclusion:

HLA is pleased that the City has taken some steps to cure the concerns raised on the first draft of the CDC. Changes to the second draft need to be made to allow all persons fair access to housing in Hillsboro. HLA hopes that the Hillsboro Planning Commission will take the right steps to correct the violations described above. Specifically, the definition of "household" should include the definition of family and place a consistent maximum number of residents for all persons, to at least eight, if not more. The CDC should not count live-in caregivers in the total number of residents in a household. The reasonable accommodation process should be revised and the authority of subsequent director’s to revoke a previous director’s grant of reasonable accommodation should be removed. Any reference to one dwelling equaling only four persons should also be removed.

HLA is available for further dialogue on these issues. We ask the Planning Commission to refrain from making a decision without fixing these shortfalls of the code amendments. Thank you for your consideration.

Sincerely,

[Signature]

Jennifer Bragar
President

Attachments: Craigslist Ads

PDX_DOCS:517299.1
Multigenerational Home with separate Guest house in Hillsboro

$2295 / 5br - 2400ft² - Multigenerational Home with separate Guest house in Hillsboro (Hillsboro)

Ranch style home with guest house.

Five bedrooms.

Close to Downtown Hillsboro and Intel. Great for students, only six blocks from Pacific University Hillsboro Campus.

This is two homes on one lot! Five bedrooms, 2.5 bath.

A 1600 square foot, 3 bedroom 1.5 bath home. This home has a remodeled kitchen and bath. All on a single story so you are not climbing steps all the time. The home is on a large 1/4 acre lot that we maintain for you.

The Guest House in the back is 2 bedroom 1 bath. This home has its own kitchen and laundry as well. Your Mother-in-Law will love it. The guest house also has a fireplace.

You can rent this whole property for $2295/month. $1000 deposit. Tenant would pay utilities.

Both buildings have separate addresses and electric utility. Visit BestOregonRentals.com

or call [show contact info] for more information.
Multigenerational Home with separate Guest house in Hillsboro

http://portland.craigslist.org/wsc/apa/4422333034.html

iq>95
• do NOT contact me with unsolicited services or offers

post id: 4422333034 posted: 15 days ago updated: 6 hours ago email to friend ♥ best of 2

Please flag discriminatory housing ad.

Avoid scams. Deal locally! DO NOT wire funds (e.g., Western Union), or buy/rent sight unseen.
Spacious House in Hillsboro

$1375 / 4br - 1416ft² - Spacious House in Hillsboro (165 NE 37th Ave.)

Property Address
165 NE 37th Ave | Hillsboro, OR 97124
Available: 04/21/2014

Offered By
Associated Property Management, Inc |

Description

65---Spacious home with fresh paint and new carpet. Kitchen is equipped with an electric range, refrigerator and dishwasher disposal. FAG heat and wood burning fireplace. DBL garage. NO SMOKING, NO PETS ALLOWED. (HOME WILL HAVE NEW EXTERIOR PAINT PRIOR TO MOVE IN)

Details

- Beds/Baths: 4BD/2.0BA
- Square feet: 1,416

Rental Terms

- Rent: $1,375
- Available: 04/21/2014
- Security Deposit: $1,325.00

- do NOT contact me with unsolicited services or offers

post id: 4428787907 posted: 11 days ago updated: 4 days ago email to friend " best of [1]"
Large 4BD house in NW Hillsboro

$3100 / 4br - 3105ft² - Large 4BD house in NW Hillsboro (Hillsboro)

Gorgeous four bedroom tree full bathroom loft area. This home is immaculate, has the extra room on the main floor, has formal living room, dining room and a huge family room too. Large island kitchen with desk and eating nook. Nice deck and patio in back yard, and a 3 car garage.

Over 3100 sq. ft. living area.

SCHOOLS
Elem. School Patterson
Middle School Evergreen
High School Glencoe
Available in August.

* do NOT contact me with unsolicited services or offers

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Avoid scams, deal locally! DO NOT wire funds (e.g. Western Union), or buy/rent sight unseen.