

## **Ninth Circuit Clarifies Standards For Housing Discrimination Claims**

Can a city protect itself from discriminatory zoning claims by adopting a facially neutral ordinance that treats similarly situated land uses the same? Apparently not, said the Ninth Circuit in [Pacific Shores Properties v. City of Newport Beach](#) (Case No. 11-55460), decided on September 20. In a challenge brought against a City of Newport Beach zoning ordinance imposing restrictions on group homes, the court ruled that the plaintiffs could prevail merely by showing that the City acted with discriminatory animus. The City historically classified group homes – where recovering substance abusers live communally – as "single housekeeping units" that generally were allowed to locate in residential zones without a permit. However, based on complaints from residents, in 2008 the City adopted an ordinance that changed this classification to "residential care facilities." The ordinance placed a number of restrictions on locating new group homes in residential zones and required existing group homes in such zones to obtain a special use permit. The ordinance on its face did not single out group homes and imposed the same restrictions and requirements on other types of group living arrangements. Several existing group homes sued the city, claiming discrimination in violation of federal and California law. While the trial court recognized that persons recovering from drug or alcohol addiction qualify as disabled and are therefore protected from housing discrimination, it granted summary judgment for the City, on the ground that the plaintiffs failed to show they were treated differently than similarly situated individuals in other types of group living arrangements. The trial court therefore found irrelevant evidence of the City's discriminatory intent. The Ninth Circuit reversed, stating: "Our cases clearly establish that plaintiffs who allege disparate treatment under statutory anti-discrimination laws need not demonstrate the existence of a similarly situated entity which was better treated than the plaintiffs in order to prevail." Rather, the court emphasized, that is only *one* way to prevail. Another way to prevail, according to the court, is to present direct or circumstantial evidence of discriminatory intent. Here, the Ninth Circuit found that the plaintiffs presented sufficient evidence of discriminatory intent to go to trial. This evidence showed that the ordinance was enacted specifically to target group homes and that regulating other types of group living arrangements was merely "for the purpose of maintaining a veneer of neutrality." In response to calls for a stronger ordinance that simply banned all group homes in the City, a councilmember explained that a facially neutral ordinance was needed to withstand judicial scrutiny and that residents should "judge us by our actual results." Then, in enforcing the ordinance, the City targeted all nonconforming group homes but did not take any enforcement action against other types of group living arrangements until the plaintiffs pointed out this fact during the litigation. The court also emphasized that the plaintiffs' discrimination claim did not depend on whether the City denied their permit applications to stay in business. The court explained: "The City fails to appreciate that it was the imposition of the Ordinance that triggered the Plaintiffs' alleged injuries. We have recognized that it is unlawful discrimination to subject individuals to the rigors of the governmental or administrative process with an intent to burden, hinder, or punish them by reason of their membership in a protected class." Accordingly, the court reversed the summary judgment in the City's favor and remanded the case for a trial. Ultimately, it will be for the jury to decide the matter – unless the parties agree to settle the case.

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