



Acting Mayor Terence Murphy

City of Holyoke

Law Department

August 13, 2021

City Council  
536 Dwight Street  
Holyoke, MA 01040

RECEIVED

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Holyoke City Clerk's  
Holyoke, MA

Dear Councilors:

On August 3, 2021, the City Council referred the following order to the Law Department and copied to Ordinance Committee, which specifically states:

The city council amend its zoning ordinances to no longer allow by automatic right a "residential care or rehab center" in RA, R1, R1A, R2 zones and to require city council special permit for such a facility to be located in any other zone. This would be exactly what the city uses for "boarding houses with 4 or more boarders" and very similar to what is used for Independent Living, Retirement, and Assisted Living. Refer to ordinance and law department.

**1. Can the City council amend its zoning ordinances to no longer allow by automatic right a residential care or rehab center in RA, R1, R1A, R2.**

The simple answer regarding amending the zoning ordinances as requested above is that the municipality could potentially be violating the Americans with Disabilities Act, Federal Fair Housing Act, and the Massachusetts Zoning Act.

The Federal Americans with Disabilities Act, the Federal Rehabilitation Act, the Federal Fair Housing Act, and the Massachusetts Zoning Act bar the prohibition of substance abuse treatment facilities. The zones as enumerated in the order proposed, for instance the R1 zoning district, allows residential care or rehabilitation centers as a use by right.

The Massachusetts Zoning Act, G.L.c. 40A Section 3, paragraph 4, prohibits town bylaws that have a discriminatory effect on disabled persons:

Notwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination. The provisions of this paragraph shall apply to every city or town, including, but not limited to the city of Boston and the city of Cambridge.



Persons who are currently suffering from drug addiction are considered to be disabled under G.L. c. 40A, § 3. See *S. Middlesex Opportunity Council, Inc. v. Town of Framingham*, 752 F. Supp. 2d 85, 95 (D. Mass. 2010) ("Federal regulations define 'handicap' to include drug addiction or alcoholism that 'substantially limits one or more major life activities.'"). Facilities that serve such disabled persons, such as substance abuse treatment facilities, are generally entitled to protection, in order to serve the disabled population. *Granada House, Inc. v. City of Boston*, 1997 WL 106688 at \*9 (Mass. Super. Feb. 28, 1997) ("Massachusetts would look to federal law, including the [Fair Housing Act], in interpreting the phrase 'disabled person' and 'persons with disabilities', and that by so doing, the [Massachusetts Zoning Act] must be read to bar the City's discriminatory treatment of a group home for recovering drug and alcohol users under the Code."); *Spectrum Health Systems, Inc. v. City of Lawrence*, No. 2015-288-C (Essex Superior Ct.) ("Based upon the record now before this Court, the plaintiff Spectrum is entitled to those protections set out under G.L. Ch. 40A, § 3, as amended."). Such protections are designed to prevent communities from categorically banning the construction of such facilities, which would, in turn, discriminate against disabled populations who require these services.

Substance abuse treatment facilities are likewise protected by the Americans with Disabilities Act (42 U.S.C. §§, 12132 et seq.) (the "ADA"), the Rehabilitation Act (29 U.S.C. § 794(a)) (the "RA"), and the Fair Housing Act (42 U.S.C. § 3604(f)(1) et seq.) (the "FHA"). Federal courts have repeatedly found that local zoning laws which treat disabled individuals differently than non-disabled individuals are barred by federal law. See *U.S. v. City of Baltimore*, 845 F.Supp. 2d 640, 647-648 (D. Md. 2012) (Baltimore's zoning code requirement that residential substance abuse treatment programs obtain a conditional approval before locating in any district for which they were otherwise eligible was facially discriminatory in violation of the ADA and FHA). Discrimination does not only take the form of outright bans or disparate treatment; overly burdensome procedural zoning requirements can also be found to be discriminatory. *Id.* at 648 ("[C]ourts have found ADA and FHA violations not only in cases of specific zoning actions such as outright permit denials, but also in cases of burdensome procedural zoning requirements uniquely placed on disabled individuals.")

In addition to the prohibition of the facilities in zones RA, R1, R1A, R2, the order goes on to further state that a special permit be required by City Council for such a facility in any zone. This procedure would appear to create a hardship for a protected class of people, which may appear to be discriminatory in practice.

It has been suggested that the City uses this type of procedure in other instances. Specifically, comparisons have been proposed to that of a boarding housing with four (4) or more boarders and it was alleged that this would also be similar to what is used for Independent Living, Retirement, and Assisted Living. However, comparing residential or rehabilitation facilities and boarding houses are not the same. The above-mentioned Acts are designed to afford protections to a specific body of people and the argument can be made that those protections are not intended for all boarding homes as it would be for all rehabilitation facilities.



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I hope the above addresses your concerns. If you have any questions or need anything further, please feel free to contact me.

Very truly yours,

  
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Lisa Ball,  
Acting City Solicitor

  
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Jenna Wellhoff,  
Assistant City Solicitor