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**From:** Mary Helen Beatificato <mh@nsightrecovery.com>  
**Sent:** Tuesday, January 18, 2022 11:35 AM  
**To:** CITY CLERK  
**Cc:** Marisa.Prasse@hcd.ca.gov; HousingElements@hcd.ca.gov; melinda.coy@hcd.ca.gov; Kyle.Krause@hcd.ca.gov; Zachary.Olmstead@hcd.ca.gov; KC.Mohseni@hcd.ca.gov; Jennifer.Seeger@hcd.ca.gov; Geoffrey.Ross@hcd.ca.gov; Megan.Kirkeby@hcd.ca.gov; Janeen.Dodson@hcd.ca.gov; Ryan.Seely@hcd.ca.gov; Pedro.Galvao@hcd.ca.gov  
**Subject:** [NOENCRYPT] PUBLIC HEARING ITEM #1 - CITY OF COSTA MESA 2021-2029 (SIXTH CYCLE) HOUSING ELEMENT (GP-21-01)

To the Mayor and Honorable Members of the City Council,

In connection with tonight's public hearing on the City's Housing Element Update, I am writing to express concerns about the Costa Mesa's group home regulations and reasonable accommodation process and share my experience with you as an illustration of how these regulations are a very real barrier to the provision of housing for people with disabilities.

Since early 2015, my company (Insight Psychology and Addiction, Inc.) has been providing supportive housing in a six-unit apartment building in a multi-family residential zoning district in Costa Mesa. In late 2015 (i.e., after my company had already started providing its supportive housing), the City adopted its group home regulations for multi-family zoning districts that purport to apply retroactively to existing group homes. Those regulations are codified in Chapters XV and XVI of Title 13 of the Costa Mesa Municipal Code (starting at § 13-310). Costa Mesa also adopted "operator's permit" requirements for providers of group housing, which are codified in Article 23 of Chapter II of Title 9 of the Costa Mesa Municipal Code (starting at § 9-370).

The type of housing my company provides is exceptionally rare and desperately needed. We provide supportive housing to adults with mental health disabilities, like PTSD, bipolar disorder, anxiety, and depression. Our supportive housing is not a sober living home. Most of our residents are "stepping down" from in-patient psychiatric treatment and learning how to live independently. We provide a crucial step between in-patient care and independent living. We are the only supportive housing of this kind in the region. Our residents would not be eligible to live in a sober living home (nor would they want to).

After the City adopted its new group home regulations, City staff informed me I would need a conditional use permit if I wanted to continue providing this supportive housing. I promptly applied for the permit. It took the City two and a half years to process my application (September 2016 through July of 2018), and then the City told me it planned to deny my application because my supportive housing is within 650 feet (measured "as the crow flies" from outer property lines) from new group homes that opened after my housing in unincorporated Orange County (i.e., outside Costa Mesa City limits).

I asked the City to relax its separation requirement for my supportive housing (which pre-dates the City's group home regulations and the new group homes in unincorporated County territory) as a disability-related "reasonable accommodation." The City's process for evaluating reasonable accommodation requests is in Article 15 of Chapter IX of Title 13 of the Costa Mesa Municipal Code (starting at § 13.200.60) puts the burden on the individual making the request to prove up a number of different "findings," many of which are on subjects that are exclusively within the City's knowledge and control (e.g., requiring *the applicant* to prove the accommodation "will not impose an undue financial or administrative burden *on the city*" [emphasis added]). The full list of findings is in Costa Mesa Municipal Code Section 13-200.62(f). Even though it seemed like this was designed to be an impossible task, I followed the City's procedure and submitted a formal

request for a “reasonable accommodation” on August 3, 2018. On April 5, 2019, the City’s Zoning Administrator denied my request for a reasonable accommodation because he said, based on my letter, he could not make all eight of the findings required by CMMC § 13-200.62(f). The Zoning Administrator’s denial was largely based on his misconception that the housing my company provides is a sober living home, or that the needs of my residents could be met by the City’s sober living homes). That is patently false. In fact, I provided detailed reasons why sober living homes cannot meet the needs of the individuals who reside in Nsight’s supportive housing.

I appealed the Zoning Administrator’s denial of my accommodation request to the Costa Mesa Planning Commission and Costa Mesa City Council. Both bodies held duly-noticed public hearings on my appeals where they sent mailers to all residents within 500 feet of my supportive housing. At those public hearings, members of the community did not hide their fears and prejudices about group housing for people with disabilities. Most of the speakers had no direct experience with my supportive housing (which had already been operating for three years with no code enforcement complaints at the time of the hearings). The Planning Commission and City Council denied my appeals, and the City ordered me to cease operating my supportive housing within 30 days. As a last resort, I filed a legal action that is still pending. Our trial date is April 5, 2022.

There is no question that the City’s group home regulations have had their intended effect of reducing the numbers of group homes for people with disabilities in Costa Mesa. The City posts spreadsheets on its website tracking the group homes it has successfully closed (links below).

- City approved sober living/group homes - <https://app.smartsheet.com/b/publish?EQBCT=f6f1941be3624556ab1b03e829df4639>
- State approved facilities (DHSC) - <https://app.smartsheet.com/b/publish?EQBCT=5fc6477aa1974f16b790242bbd936b8c>
- Application Status - <https://app.smartsheet.com/b/publish?EQBCT=c24b90faaff4b0680b6e86564927908>
- Group homes cited - <https://app.smartsheet.com/b/publish?EQBCT=aff3877f2ef54eb285196f94a1607cd9>
- Operators that have closed - <https://app.smartsheet.com/b/publish?EQBCT=664bc6e0f3354741801736f60b3ce47c>
- Locations under review - <https://app.smartsheet.com/b/publish?EQBCT=5459f35580524b4ab147a085d7720b0c>

The City’s data shows it has issued *hundreds of citations* for violations of its group home regulations (see “Group homes cited” link) and *closed more than 80 group homes* (see “Operators that have closed” link). Of *sixty-six applications* for group home permits (conditional use permits/CUPs and special use permits/SUPs), the City has *only approved one* (see “Application Status” link).

The City’s regulations have had a devastating impact on the availability of shared housing for people with disabilities. Between 2017 (when grace periods ended and the City started enforcing its group home ordinances in earnest) and 2021, the City has lost *more than 70%* of its group home beds:

Group Home Beds*	2014	2017	2021
Beds in the Single Family Residential Zone	386	425	183
Beds in Multi-Family Residential Zones	762	1,273	296**

Beds in Other Zones	76	82	0
<b>TOTAL BEDS</b>	<b>1,224</b>	<b>1,780</b>	<b>479</b>

\* All of these figures come from the City’s own data, which Insight provided to the City in connection with its summary judgment motion in its legal action against Costa Mesa.

\*\* This figure and the grand total include the 30 beds Insight is currently providing. Closing Insight’s housing will therefore, result in a loss of 6.26% of the City’s total beds (i.e., 30 of 479 is 6.26%).

**The City’s Housing Element Update does not address or mitigate these barriers.** It does not address the comments the City received from the California Department of Housing and Community Development (HCD) on December 3, 2021. HCD’s comment letter instructed the City to provide “specific analysis of any potential constraint, including considering public comments and add or modify programs as appropriate.” The draft Housing Element Update does not do this.

It is essential that the City Council listen to the needs of the people with disabilities who rely on shared housing and the providers of shared housing as it updates its Housing Element. If I can be of any assistance, please do not hesitate to contact me directly.

Sincerely,

Mary Helen Beatificato

Best regards,

*Mary Helen Beatificato*

CEO & General Counsel  
Call or Text: (949) 214-8618



**NSIGHT**

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**Nsight Psychology & Addiction**

4000 Birch Street, Suite 112

Newport Beach, CA 92660

[www.NsightRecovery.com](http://www.NsightRecovery.com)

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**From:** Autumn Elliott <Autumn.Elliott@disabilityrightsca.org>  
**Sent:** Tuesday, January 18, 2022 11:58 AM  
**To:** CITY CLERK  
**Cc:** Marisa.Prasse@hcd.ca.gov; HousingElements@hcd.ca.gov; melinda.coy@hcd.ca.gov; Kyle.Krause@hcd.ca.gov; Zachary.Olmstead@hcd.ca.gov; KC.Mohseni@hcd.ca.gov; Jennifer.Seeger@hcd.ca.gov; Geoffrey.Ross@hcd.ca.gov; Megan.Kirkeby@hcd.ca.gov; Janeen.Dodson@hcd.ca.gov; Ryan.Seely@hcd.ca.gov; Pedro.Galvao@hcd.ca.gov  
**Subject:** PUBLIC HEARING ITEM #1 - CITY OF COSTA MESA 2021-2029 (SIXTH CYCLE) HOUSING ELEMENT (GP-21-01)  
**Attachments:** 2022.01.18 Public Comment to CM re HE.pdf

Please see attached public comments for today's City Council meeting.

Thank you,

**Autumn M. Elliott**

Litigation Counsel

Disability Rights California, Legal Advocacy Unit

350 South Bixel Street, Suite 290, Los Angeles, CA 90017

Tel: (213) 213-8000 or D: (213) 213-8125 | Fax: (213) 213-8001

TTY: (877) 669-6023

Email: [Autumn.Elliott@disabilityrightsca.org](mailto:Autumn.Elliott@disabilityrightsca.org)

Intake Line: [800-776-5746](tel:800-776-5746)



Website: [www.disabilityrightsca.org](http://www.disabilityrightsca.org) | [www.disabilityrightsca.org/espanol](http://www.disabilityrightsca.org/espanol)

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**LEGAL ADVOCACY UNIT**

350 S. Bixel St., Ste. 290

Los Angeles, CA 90017

Tel: (213) 213-8000

Fax: (213) 213-8001

TTY: (800) 719-5798

Intake Line: (800) 776-5746

[www.disabilityrightsca.org](http://www.disabilityrightsca.org)

*Sent Via Email Only*

January 18, 2022

City Council  
City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
[cityclerk@costamesaca.gov](mailto:cityclerk@costamesaca.gov)

Re: PUBLIC HEARING ITEM #1 - CITY OF COSTA MESA 2021-2029  
(SIXTH CYCLE) HOUSING ELEMENT (GP-21-01)

To Mayor John Stephens and the Honorable Members of the City Council:

We are writing to urge the City Council not to approve the draft Housing Element until it is revised to reflect changes that are needed in Costa Mesa's laws and procedures to reduce barriers to housing for people with disabilities. Disability Rights California is a non-profit agency established under federal law to protect, advocate for and advance the human, legal and service rights of Californians with disabilities.<sup>1</sup> Disability Rights California works in partnership with people with disabilities, striving towards a society that values all people and supports their rights to dignity, freedom, choice, and quality of life. Since 1978, Disability Rights California

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<sup>1</sup> Disability Rights California provides services pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15001, PL 106-402; the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. § 10801, PL 106-310; the Rehabilitation Act, 29 U.S.C. § 794e, PL 106-402; the Assistive Technology Act, 29 U.S.C. § 3011,3012, PL 105-394; the Ticket to Work and Work Incentives Improvement Act, 42 U.S.C. § 1320b-20, PL 106-170; the Children's Health Act of 2000, 42 U.S.C. § 300d-53, PL 106-310; and the Help America Vote Act of 2002, 42 U.S.C. § 15461-62, PL 107-252; as well as under California Welfare and Institutions Code §§ 4900 et seq.

has provided essential legal services to people with disabilities regarding access to housing and other critical needs.

The California Department of Housing and Community Development (“HCD”) sent the City a December 3, 2021 letter regarding revisions that the City must make to the draft Housing Element to bring it into compliance with the law. The December 3 letter explained that the City would need to address a number of issues concerning “Housing for People with Disabilities.” However, the revisions to the draft Housing Element before the Council’s consideration today fail to adequately respond to the issues raised by HCD. We write to call particular attention to the following:

### **1. Reasonable Accommodation**

HCD’s December 3, 2021 letter noted that the “additional factors” that the City may consider in its review of a reasonable accommodation application “may act as constraints,” and explained that the draft Housing Element must “include specific analysis of any potential constraint, including considering public comments and add or modify programs as appropriate.” The revisions to the draft Housing Element do not adequately respond to this comment. If an accommodation is necessary to provide people with disabilities full and equal access to housing due to their disabilities, an accommodation must be provided unless the City can demonstrate that doing so would be an undue financial and administrative burden or would be a fundamental alteration of the relevant programs, services, or activities. The same is true if a reasonable accommodation is necessary to provide meaningful access to housing for people with disabilities. The City’s current reasonable accommodation procedures create additional and unnecessary barriers to access because they allow for consideration of additional factors, such as impact on neighbors. Impact on neighbors, for instance, may only come into the reasonable accommodation analysis if it gives rise to an undue financial and administrative burden on the City, in light of the full resources available to the City, or if it would result in an unavoidable and fundamental alteration to a relevant City program, service, or activity. Otherwise it may not be considered at all, and the City should not be inviting neighbors, who may oppose a reasonable accommodation request due to fear and stereotypes regarding people with disabilities, to weigh in on the request. Moreover,

the City's draft Housing Element notes that the City's current procedure is to consider "the extent to which the City would have to dedicate resources, such as staff time and funds, to grant the request and other requests like it." Draft HE at 3-33. This is an illegal factor: the City must consider each reasonable accommodation request on its own and may not deny an accommodation request on the grounds that others may make a similar request.

Additionally, Disability Rights California has gained some familiarity with the actual operation of Costa Mesa's reasonable accommodation process through our representation of an individual plaintiff in the *Insight v. Costa Mesa* case, and we have been appalled at what we have learned. Costa Mesa Zoning Code and practice put the burden on the *applicant* to demonstrate that a requested accommodation would not be an undue burden or fundamental alteration, which is contrary to law. Moreover, Costa Mesa requires applicants to submit their reasonable accommodation requests to City staff for a purported consideration of their request, but City staff admitted to us in deposition testimony that this is a sham proceeding in the case of group homes seeking a waiver of the City's 650-foot separation requirement, because the City Council has directed staff *never* to grant such a request.

The City's revised Housing Element neither adequately acknowledges nor responds to these problems, which result in unnecessary and illegal barriers to access for people with disabilities.

## **2. Definition of Family**

HCD's December 3 letter observed that the City defines "family" as "a single housekeeping unit with multiple restrictions that may act as constraints on housing for persons with disabilities" and explained that the Housing Element "should include specific analysis of any potential constraint, including considering public comment and add or modify programs as appropriate." However, the revised Housing Element does not do this. The definition ignores the fact that many individuals with disabilities do have a disability-related reason for needing separate leases, or for taking their meals separately, or for keeping expenses separate from other members of the household, or for relying on a third party to

determine who else lives in the household, for instance. Public benefits programs that people qualify for on the basis of disability, such as housing or income subsidies, for instance, can require things such as separate leases, meals, or finances. People can have a disability-related reason for having separate food. Due to a disability-related impairment, a person may need a third party to organize their housing and determine who else will be living with them. The revised Housing Element does not engage with any of these matters and entirely disregards the constraints that they place on housing options for people with disabilities.

Nor does the Housing Element acknowledge that, as a practical matter, these are *only* constraints for people with disabilities. The City has no practice of investigating whether blood relatives, or roommates without disabilities, are actually eating meals or doing chores together. The restrictions only become an issue with people with disabilities are living together, because they will be treated as a “group home” if they cannot demonstrate that they are a family/single housekeeping unit.

### **3. Group Homes**

HCD’s December 3 letter accurately observes that the “City’s zoning code appears to isolate and regulate various types of housing for persons with disabilities based on the number of people and other factors.” As noted above, the City does not have “a barrier-free definition of family,” as the December 3 letter explains is required. As a result, the City subjects housing for people with disabilities to onerous regulations and excludes them from some residential zones. And, as the December 3 letter notes, “these housing types in many cases are subject to a special use or conditional use permit, potentially subjecting housing for persons with disabilities to higher discretionary standards where an applicant must demonstrate compatibility with the neighborhood, unlike other residential uses.”

The revised Housing Element does not “include specific analysis of these and any other constraints, including their enforcement and considering public comments, for impacts on housing for persons with disabilities and add or modify programs as appropriate,” as the December 3 letter explains that it should. Instead, the revised Housing Element



simply argues without evidence that Costa Mesa is justified in imposing these restrictions on housing options for people with disabilities. The revised Housing Element argues that, by limiting housing options for people with disabilities, the City is actually *protecting* them. But this is nonsensical. Many people have a disability-related reason for needing to live in the kind of housing that Costa Mesa terms a “group home.” Our client in the *Insight* case, for instance, is a woman with mental health disabilities who needed to live in a supportive environment for a month or two while she transitioned from a psychiatric facility to community living. Costa Mesa’s group home ordinances restrict the ability of housing providers to create this kind of housing in the community. There are far too few housing options for people with disabilities as it is. And in the case of our client, enforcement of Costa Mesa’s group home ordinances will result in *Insight*’s housing being shut down, with nowhere else in the City to go. Because it is the only housing of its kind in the region, people like our client will have nowhere to go for that kind of housing, and will be either stuck in an institution or living in a housing situation that does not provide what they need.

We urge the City Council not to approve the draft Housing Element until it fully responds to these and other barriers to access for people with disabilities.

Sincerely,



Autumn M. Elliott  
Litigation Counsel

Zeenat Hassan  
Staff Attorney

CC: [Marisa.Prasse@hcd.ca.gov](mailto:Marisa.Prasse@hcd.ca.gov); [HousingElements@hcd.ca.gov](mailto:HousingElements@hcd.ca.gov);  
[melinda.coy@hcd.ca.gov](mailto:melinda.coy@hcd.ca.gov); [Kyle.Krause@hcd.ca.gov](mailto:Kyle.Krause@hcd.ca.gov);

DRC Comments on Public Hearing Item #1: Housing Element  
January 18, 2022  
Page 6 of 6

[Zachary.Olmstead@hcd.ca.gov](mailto:Zachary.Olmstead@hcd.ca.gov); [KC.Mohseni@hcd.ca.gov](mailto:KC.Mohseni@hcd.ca.gov);  
[Jennifer.Seeger@hcd.ca.gov](mailto:Jennifer.Seeger@hcd.ca.gov); [Geoffrey.Ross@hcd.ca.gov](mailto:Geoffrey.Ross@hcd.ca.gov);  
[Megan.Kirkeby@hcd.ca.gov](mailto:Megan.Kirkeby@hcd.ca.gov); [Janeen.Dodson@hcd.ca.gov](mailto:Janeen.Dodson@hcd.ca.gov);  
[Ryan.Seely@hcd.ca.gov](mailto:Ryan.Seely@hcd.ca.gov); [Pedro.Galvao@hcd.ca.gov](mailto:Pedro.Galvao@hcd.ca.gov)

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**From:** Christopher Brancart <cbrancart@brancart.com>  
**Sent:** Tuesday, January 18, 2022 12:01 PM  
**To:** GREEN, BRENDA; NGUYEN, DAVID; CITY CLERK  
**Cc:** Megan.Kirkeby@hcd.ca.gov; Huntley, Robin@HCD; Marisa.Prasse@hcd.ca.gov; Melinda.Coy@hcd.ca.gov; Compliancereview@hcd.ca.gov  
**Subject:** CC Mtg - 01/18/2022 - Public Comment - Please distributed before CC mtg  
**Attachments:** LT City and HCD - Agenda Item CC Mtg 01-18-2022 (sent).pdf

Please see attached public comment re an agenda item on tonight's CC agenda, 01/18/2022. Thank you.

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Christopher Brancart  
Brancart & Brancart  
(650) 879-0141 (voice)  
(650) 879-1103 (fax)

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**January 18, 2022**

*Via Email*

Brenda Green, City Clerk  
David Nguyen, Deputy City Clerk  
Stacy Bennett, Deputy City Clerk  
City of Costa, City Hall  
77 Fair Drive  
Costa Mesa, CA 92626  
*brenda.green@costamesaca.gov*  
*david.nguyen@costamesaca.gov*  
*stacy.bennett@costamesaca.gov*  
*cityclerk@costamesaca.gov*

Megan Kirkeby, Deputy Director  
Robin Huntley, Analyst  
Marisa Prasse, Analyst  
Melinda Coy, Manager  
Department of Housing and Community  
Development  
2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
Fax: (916) 263-7453  
*Megan.Kirkeby@hcd.ca.gov*  
*Robin.Huntley@hcd.ca.gov*  
*Marisa.Prasse@hcd.ca.gov*  
*Melinda.Coy@hcd.ca.gov*  
*Compliancereview@hcd.ca.gov*

Re: City of Costa Mesa: Updated Draft Costa Mesa Housing Element  
Sixth Cycle, 2021-2029 (Draft dated: January 2022)  
City Council Meeting, January 18, 2022, Public Hearing Item 1

Dear Gentilepersons:

The City of Costa Mesa released last Friday its updated Draft Housing Element in response to comments by the public and review by the Department of Housing and Community Development. The City will conduct a public hearing on the updated draft Housing Element at tonight's City Council meeting.

Because the updated draft fails to adequately address the public and HCD comments regarding the original draft, submitted October 6, 2021, and contains several provisions that violate the state Government Code governing zoning and

planning, we urge the City Council to revise the updated draft as follows:

1. **Enforcement, HCD Letter, dated December 3, 2021, Appendix, p. 2.** The greatest source of fair housing complaints regarding dwellings in the City of Costa Mesa since 2015 has been the City's own group home regulations, codified at CMMC 9-370 et seq., 13-310, et seq., and 13-320, et seq. The City's updated draft fails to address this fact.

2. **Disproportionate Housing Need including Displacement Risk, HCD Letter, dated December 3, 2021, Appendix, p. 2.** The updated draft fails to address the displacement of persons with disabilities as a result of the City's retroactively applied group home regulations, City Zoning Code, Chapters XV and XVI. City records report that pursuant to those regulations, the City had shuttered more than 82 group homes and cited at least 227 for failure to comply with the City's group home regulations. Moreover, as early as 2015, the City acknowledged that its group home regulations would result in the closure of group homes, rendering the occupants of those homes homeless. This program by the City of Costa Mesa has been the greatest source of displacement in Costa Mesa since 2015.

3. **Supportive Housing by Right, HCD Letter, dated December 3, 2021, Appendix, pp. 6, 7.** There is no record of the City approving supportive housing since 2015. On the contrary, the City has legislated to dismantle existing supportive housing and to preclude new supportive housing from being built in Costa Mesa. The only zoning district in which supportive housing may be located by right is the City's Institutions and Recreation district, a non-residential zoning district.

4. **Reasonable Accommodation, HCD Letter, dated December 3, 2021, Appendix, pp. 6, 7.** The City amended its requirements and standards to obtain a reasonable accommodation (RA) from its zoning regulations at the same time it enacted its second ordinance, 14-13, to limit the number and location of group homes. This timing was not a coincidence. The City overhauled its RA requirements as part of Ordinance 14-13 in order to preclude existing group homes from avoiding closure as a result of the retroactive application of the City's group home regulations.

5. **Definition of Family, HCD Letter, dated December 3, 2021,**

**Appendix, p. 7.** The City amended its definition of Single Housekeeping Unit (SHU) in 2013 pursuant to Ordinance 13-05 for the express purpose of excluding group homes from qualifying as an SHU. The City further amended that definition as part of Ordinance 14-13, enacting its R-1 group home regulations, by inserting terms and conditions that explicitly exclude group homes from qualifying as an SHU.

**6. Group Homes, HCD Letter, dated December 3, 2021, Appendix, p. 8.** The City has amended its zoning regulations several times since 2013 to limit, close, and exclude group homes for persons with disabilities. In 2013, it enacted Ordinance 13-05, redefining SHU to exclude group homes from qualifying as an SHU so that they are subject to enforcement and closure by the City. In 2014, the City enacted Ordinance 14-13, narrowing its RA requirements, further narrowing the SHU definition, defining group homes in terms of the disability status of residents, and retroactively prohibiting group home in the City's R-1 districts unless permitted. Permitting, however, was subject to several discriminatory conditions. See Zoning Code, Tit. 13, Chapters I, XV. In 2015, the City extended its group home regulations to its multi-family residential districts, imposing additional permitting requirements that apply to no other businesses providing housing in the City. See Zoning Code, Tit. 13, Chapter XVI and Bus. Reg., Chapter II, Article 23. That same legislation imposed discriminatory hearing and notice requirements on group homes that apply to no other land uses regulated by the City.

Several group homes have challenged the application of these regulations to them individually and have lost for a variety of reasons before federal District Judge James Selna. But no court has ever addressed whether the City's group home regulations are themselves discriminatory on their face – until last week. An order by Judge Selna, dated January 12, 2022, finds that the regulations do indeed discriminate on their face, presenting a prima facie case of intentional discrimination committed by the City of Costa Mesa.

The City's current Zoning Code violates state and federal nondiscrimination laws, including Cal. Govt. Code § 65008. For that reason and others, it also violates state Housing Element and Affirmatively Furthering Fair Housing requirements. For HCD to approve the updated draft would be to give its stamp of approval to intentional discrimination on the basis of disability and make a

mockery of the State Planning and Zoning Law requirements under the Cal. Govt. Code.

Thank you for your consideration.

Yours truly,

David Alexander, Founder,  
RAW Recovery  
(949) 214-9307  
dave@rawrecovery.com

**From:** David Martinez <[davimart06@gmail.com](mailto:davimart06@gmail.com)>  
**Date:** Sunday, January 16, 2022 at 10:05 PM  
**To:** "REYNOLDS, ARLIS" <[ARLIS.REYNOLDS@costamesaca.gov](mailto:ARLIS.REYNOLDS@costamesaca.gov)>  
**Subject:** NB-2 Suggest Off-Site Improvements

Hello,

Here are some suggested off-site improvements that could be made at Superior and Industrial (using some numbering from the Pedestrian Master Plan that is in development):

- A1/A5 (Sidewalk Network/Missing Sidewalks) - There are sidewalks in the area that...don't exist. Close by is NB Pomona and a bit further away is SB Old Newport.
- A3 (Separate Bike Facility) - Needed so that pedestrians and bikes aren't using the same area.
- A13 (Curb Ramps) - Directional curb ramps are needed at the intersection
- A14 (Curb Extensions/Bulb Outs) - Would encourage tighter and slower turns
- B9 (Adding Missing Crosswalks) - Going SB on Superior there is a missing crosswalk.
- B13 (Pedestrian Countdown Signals) - No countdowns on most ped signals
- B18 (Leading Ped Interval) - Should be standard in CM
- B19 (Regulating right on red) - Going from SB Superior and turning right is already prohibited, but because this intersection is so complicated I think this is a good candidate to ban it for every right turn.
- B21 (Redesign slip lanes) - I don't think that island in the intersection is technically a slip lane but it should be redesigned anyway. The largest issue I can see with a redesign to remove it is cars heading southbound on Pomona having to do a funky turn to continue south on Superior.
- B22 (Walk sign always active) - This intersection is just weird and someone who wants to cross on a green may be walking into a car. If the walk signals are on every time a car won't be turning into the crosswalk then it's easy to know when it's safe.
- C1 (Roadway Reconfigurations) - Superior is a proposed Class II on the ATP

Thanks,  
David M