ECONOMIC & DEVELOPMENT SERVICES DEPARTMENT

July 2, 2025

SENT VIA ELECTRONIC MAIL AND U.S. MAIL

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Subject: Request for Reasonable Accommodation – The Ohio House, 115 East Wilson Street, Units A-E in Costa Mesa

Dear Mr. Brancart:

The City is in receipt of your request for a reasonable accommodation, with components submitted on May 2, 2025, May 6, 2025, and June 2, 2025, to allow Ohio House LLC to continue its operation of a sober living home at 115 E. Wilson St., Units A through E ("Wilson St. Property"). This is the third request made by Ohio House for this property. The stated basis for this renewed request is an alleged material change in facts and circumstances since prior requests were made and denied, based upon the 2022 *Group Home Technical Advisory* issued by HCD, the City's adopted housing element, the California Attorney General's amicus brief filed in the federal litigation between the City and Ohio House, HCD's 2023 letter, and an alleged reduction in the number of sober living homes in the City.

I would note that the Ninth Circuit Court of Appeals decision in *Ohio House, LLC v. City of Costa Mesa,* Case No. *22-56181,* issued April 24, 2025, considered all of the alleged changes in circumstance in reaching its decision that the City's denial of prior accommodation requests were lawful.

And while you indicate that the present request is made only under state law, that does not change the fact that you have already litigated the issue of reasonable accommodation under state law in the cited case. The Courts analyze FHA and FEHA claims under the same standard. Socal Recovery v. Costa Mesa, 56 F.4th 802, 811 (2023). The City believes that prior litigation precludes your request for an accommodation that fundamentally alters the

City's zoning scheme, and hence is unreasonable as a matter of law and is res judicata.[1] You previously argued to the District Court that it was improper for the City to consider "[w]hether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting." CMMC § 13-200.62(f)(7). Given your challenge to this section and your position that the City's reasonable accommodation ordinance should be revised to remove it, I have determined not to consider that requirement applicable for purposes of this request. I do note, however, that there are hundreds of both licensed and unlicensed beds throughout the City. Moreover, the City has consistently maintained that the 650 foot separation is fundamental to the City's zoning scheme and reducing it would change the essential nature of the scheme, which is already designed to provide a beneficial opportunity to disabled persons and intended to protect the disabled from living in an institutional setting and instead maintaining the residential character of neighborhoods for all their residents.

As to your request for accommodation under the "single housekeeping unit" definition, you have not cited any actual change in the operations of Ohio House from its inception, nor any change since the last request was made. It is clearly a business, hosting a relatively transient population, rather than a single housekeeping unit. Indeed, your request on its face makes clear the housing units do not "operate" like single housekeeping units. Fundamentally, this is because single housekeeping units do not operate as businesses. Ohio House residents are forced to submit to drug testing. They must sign an admission agreement agreeing to restrictions on activities, submission to curfews and attending meetings. Existing residents do not have control over who moves in or who moves out. Clients "share" chores not because they are a single housekeeping unit but because their contracts require that they do so. Thus, the residents are not actually a single housekeeping unit and do not qualify under the City's code. And while you assert that there is no institutional effect from allowing Ohio House to continue operating despite proximity to other group homes, you appear to base this on your claim that "The Ohio House operates consistent with the requirements the City applies to single housekeeping units." As noted above, this does not appear to be true.

The letters you have submitted include two from 115 E. Wilson, Unit C, two from 115 E. Wilson, Unit D, and one from 165 E. Wilson, Unit A, which had a CUP issued to a different operator. Unfortunately, with a regular resident load of 30-45 men as well as the factors outlined above, I cannot conclude that the Ohio House is operating like a single house-keeping unit so as to grant the requested accommodation.

[1] Your letter states that the Court simply concluded that a reasonable jury could have concluded that the City did not improperly deny Ohio House's prior accommodation request. But this ignores the fact that Ohio House made a facial challenge to the City's Reasonable Accommodation Ordinance, which the Court of Appeal rejected. The Court also upheld the trial court's denial of Ohio House's motion for judgment as a matter of law on the issue of its specific accommodation request under the facts and circumstances presented to the jury and the court. I disagree that the facts and circumstances surrounding this issue have changed.

California Courts have regularly permitted zoning in residential areas to exclude transient and institutional uses. See Santa Barbara v. Adamson, 27 Cal.3d 123, 133 (1980). The Adamson court upheld as valid "the legitimate aim of maintaining a family style of living," including regulations that require "a *bona fide* single housekeeping unit. . . . As long as [an ordinance requires that] a group bears the 'generic character of a family unit as a relatively permanent household," the regulation is valid. See id. at 133-34. The City has worked hard to provide for disabled individuals to have housing in our residential neighborhoods which is genuinely residential, and to avoid the re-institutionalization of those with disabilities. Both the separation requirement and the bona fide single house-keeping unit definitions are essential to meet that goal.

With regards to the issue of alternative accommodations and engaging in the interactive process, as stated in your citation to 2 CCR § 12177(c), the issue is "whether other alternative accommodations or modifications would be equally effective in meeting the needs . . . [and] will allow the person with the disability to use and enjoy a dwelling or housing opportunity . . . ." Thus, the issue of alternative accommodations goes to the element of necessity. See Vorchheimer v. Philadelphian Owners Ass'n, 903 F.3d 100, 103 (3d Cir. 2018). "For a housing accommodation to be 'necessary' under the Act, it must be required for that person to achieve equal housing opportunity, taking into account the alternatives on offer. . . . To qualify as alternative 'reasonable accommodations,' the accommodations must afford the particular disabled person equal opportunity both to use and to enjoy her home. . . . **But all the proffered alternatives that afford equal opportunity to use and to enjoy housing bear on whether a specific accommodation is necessary**." Id. at 103, 109 (emphasis added); see also Comm'n on Hum. Rights & Opportunities ex rel. Pizzoferrato v. Mansions, LLC, 231 Conn.App. 121, 152 (2025) ("we agree with the textual analysis of the Third Circuit in Vorchheimer and likewise conclude that, under § 46a-64c, the plain meaning of the word 'necessary' requires courts to consider 'all the proffered alternatives that afford equal opportunity to use and to enjoy housing' **in deciding whether a specific accommodation is necessary**.").

As an initial matter, the Court of Appeal has already held that the City's zoning scheme provides a more than equal opportunity to use and to enjoy housing to the disabled. Therefore, no accommodation is required to "afford equal opportunity to use and to enjoy housing" to the disabled; they already do enjoy the opportunity. Furthermore, there appear to be many multi-family properties available in the City which comply with the City's separation requirement.

Regardless, the issue of whether the requested accommodation or any alternative accommodation is "necessary" has no bearing on the issue that such accommodations would result in a fundamental alteration of the City's zoning scheme; they are separate analyses. The effect of any accommodation, alternative or not, necessary or not, that still results in Ohio House continuing to operate its business in violation of the spacing requirement under the code would still result in a fundamental alteration, thus warranting denial of the request.

Your proffered alternative of merely relabeling Ohio House as something it is not, "Supportive Housing," just to bypass the City's zoning scheme, not only does not change the effect Ohio House's business has and the fundamental alteration of the City's zoning scheme, but it also would fundamentally alter the purpose of the entirely-separate "Supportive Housing" zoning scheme that is designed to address bona fide "Supportive Housing" and not as a placeholder to relabel other land uses.

The interactive process is designed to identify whether "alternative accommodations or modifications would be equally effective in meeting the needs of the individual with a disability." Your requested accommodation is to override the City's code to allow Ohio House to continue to operate its business. Of course, there are myriad alternative ways of ignoring the City's code that would "be equally effective" in allowing Ohio House to continue to operate. But it is that continued operation itself that creates the fundamental alteration. Thus, regardless of the alternative, any such alternative accommodation would inevitably result in fundamental alteration and is not warranted.

Sincerely,

Carrie Tai
Economic and Development Services Director

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