

OVERCOMING OPPOSITION TO SUBSTANCE USE PROGRAMS: Leveraging Anti-Discrimination Law

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INTRODUCTION

Substance use treatment, recovery, and harm reduction services are critical to addressing the overdose crisis. Yet local, not-in-my-backyard (NIMBY) opposition to programs providing these services has severely limited their availability. Political challenges in opening and operating programs can delay and sometimes block their operation altogether. As a result, people who need these services may not receive them – putting their health and recovery at tremendous risk.

Opponents of substance use programs have used an array of strategies to exclude them, including zoning laws, health and safety codes, funding cuts, and challenges to programs' authorization to operate. With the recent increase in harm reduction programs, some of the same methods have been used to restrict or prohibit them. For example, onerous restrictions on syringe service programs (SSPs) have been incorporated into State or local laws authorizing their operations – including restrictions on hours of operation, requirements that participants return a syringe for every new syringe received, requirements that participants present valid State identification, and conditioning operation on local governmental approval.¹

The purpose of this guide is to educate SUD service providers, harm reductionists, attorneys, other advocates, and policy makers about how to overcome local opposition to SUD services by leveraging federal civil rights laws that prohibit discrimination against people with disabilities.

Many of these practices – especially the use of zoning laws to curtail substance use disorder (SUD) services – can constitute illegal discrimination. The purpose of this guide is to educate SUD service providers, harm reductionists, attorneys, other advocates, and policy makers about how to overcome local opposition to SUD services by leveraging federal civil rights laws that prohibit discrimination against people with disabilities. Groups or government officials that seek to

bar or restrict SUD programs also can read this guide to learn about their obligations to comply with these laws. While this guide's focus is anti-discrimination laws, advocates for SUD programs can also leverage other laws to overcome local and State opposition (e.g., zoning appeals, State law preemption, and Constitutional claims).

The guide begins with an overview of anti-discrimination protections. It then reviews key court decisions addressing whether government restrictions on SUD programs are discriminatory. Finally, it provides concrete strategies for identifying and overcoming such discrimination.

¹ See LEGIS. ANALYSIS & PUB. POL'Y ASS'N (LAPPA), *Syringe Services Programs: Summary of State Laws* (2025), <https://legislativeanalysis.org/wp-content/uploads/2025/04/Syringe-Services-Programs-Summary-of-State-Laws.pdf>; see also *Grant Park Neighborhood Assn. Advocs. v. State Dep't of Pub. Health*, 94 Cal. App. 5th 478, 311 Cal. Rptr. 3d 870 (2023) (finding that State's authorization of syringe services program was improper where State did not comply with statutory requirement to consult with local law enforcement or provide the requisite comment period before authorizing the program).

OVERVIEW OF ANTI-DISCRIMINATION PROTECTIONS

The Laws

Three federal civil rights prohibit discrimination based on disability:

- the Americans with Disabilities Act (“ADA”),
- the Rehabilitation Act of 1973 (“Rehabilitation Act” or “RA”), and
- the Fair Housing Act (“FHA”).²

The overarching goal of these laws is to eliminate discrimination by requiring government-run programs, privately-run places open to the public, employers, and housing providers to treat individuals with disabilities equally and fairly, based on an objective evaluation of their need and eligibility for services, rather than stereotypes and myths.³

Together, these laws provide the basis for challenging virtually all discriminatory actions against programs serving people who use drugs (PWUD). **They provide that no government agency – local, state, or federal – may use its zoning or other authority to discriminate against qualified individuals with a disability or the programs that serve them.** They also prohibit denying people health services because of their current drug use or the medications used to treat SUD.⁴ Finally, they require “reasonable modifications” necessary to avoid discrimination.⁵

Who is Protected by these Laws

These laws’ protections apply to any qualified “individual with a disability.” This includes people with a current disability, a record of one, as well as those who are regarded as having a disability. For purposes of these laws, disability is a physical or mental impairment that substantially limits one or more major life activities.⁶

² 42 U.S.C. § 12101, et. seq. (ADA); 29 U.S.C. § 794 et. seq. (RA); 42 U.S.C. § 3604 et. seq. (FHA).

³ *Id.*

⁴ Specifically, the laws prohibit discrimination against a qualified “individual with a disability.” SUD is generally considered a “disability.” While people who engage in the current illegal use of drugs are not protected from discrimination in employment and most other settings, they are protected in health care settings. The ADA and RA prohibit denying health services because of an individual’s current illegal use of drugs. 42 U.S.C. § 12210(c) and 28 C.F.R. §§ 35.131(b), 36.209(b) (ADA); 29 U.S.C. § 705(20)(C)(iii) and 28 C.F.R. § 35.131(b) (R.A.).

⁵ 29 C.F.R. § 35.130(b)(6) (ADA), 45 C.F.R. § 84.68(7)(i) (RA); 42 U.S.C. § 3604(f)(3)(b) (FHA).

⁶ 42 U.S.C. § 12102 (ADA); 29 U.S.C. § 705 (RA); 42 U.S.C. § 3602(h) (FHA).

▶ **Physical or mental impairment:** The implementing regulations for the anti-discrimination laws explicitly state that SUD is an impairment.⁷

▶ **Substantially limits one or more major life activities:** Many court decisions have found that SUD can substantially limit one or more major life activities, such as caring for oneself, concentrating, thinking, working, and brain and neurological functioning.⁸

While people who are currently engaging in illegal use of *drugs* are not protected by these laws in most settings (such as employment),⁹ the ADA and RA state clearly that they are protected from discrimination in the receipt of health services:

“A public entity *shall not deny health services*, or services provided in connection with drug rehabilitation, *to an individual on the basis of that individual’s current illegal use of drugs*, if the individual is otherwise entitled to such services.”¹⁰

Zoning and other government officials who block or restrict SUD-related services are denying health services, which makes this protection crucial.

The protections in these laws also apply to the SUD programs providing individuals with SUD services, if those programs experience discrimination because of their clients’ (or prospective clients’) disability.¹¹

What Discrimination Looks Like

There are three types of discrimination:

1. **Disparate treatment** involves taking an action specifically because of an individual’s disability, such as singling out individuals with a disability and treating them differently. For example, a law that excludes only people with disabilities

⁷ 28 C.F.R. §§ 35.108(b)(2), 36.105(b)(1) (ADA); 28 C.F.R. §§ 42.540(k)(2)(i), 42.540(o) (RA).

⁸ See, e.g., *MX Grp., Inc. v City of Covington*, 293 F.3d 326, 338 (6th Cir. 2002); 28 C.F.R. § 36.105 (ADA); 29 U.S.C. § 705(20)(C)(ii) (RA); 42 U.S.C. § 3602(h) (FHA).

⁹ In contrast, people with alcohol use disorder are protected even if they are currently using alcohol.

¹⁰ 42 USC § 12210(C); 28 CFR § 35.131(b)(1) (ADA); 28 U.S.C. § 705(20)(C)(3) (emphasis added).

Further, an individual who is participating in a “drug rehabilitation” program, has completed such a program, or is otherwise “rehabilitated” is an “individual with a disability” if they “no longer” engage in the illegal use of drugs. 42 U.S.C. § 12210(b) (ADA); 45 C.F.R. § 84.69.

¹¹ See, e.g., *Innovative Health Systems v. City of White Plains*, 117 F. 3d 37, 46-47 (2d Cir. 1997); *MX Group*, 293 F. 3d at 333-34; *CRC Health Group, Inc. v Town of Warren*, No. 2:11-cv-196, 2014 WL 2444435 at *8 (D. ME 2014).

from living in a certain area singles people out because of their disability. Governments seeking to exclude or restrict SUD programs typically engage in disparate treatment discrimination through the following:

- A. **Facially discriminatory laws or policies** – meaning that the language of the law itself singles out people with disabilities for different treatment. Because it is obvious from the “face,” or language, of the law or policy that it was intended to treat people with disabilities differently, no other evidence of discriminatory intent is necessary.¹²

Examples are:

▶ **Excluding all (or a certain type of) SUD programs from a geographic area or a zoning district but allowing all other health care facilities;**

▶ **Spacing or distance requirements on SUD programs (e.g., no SUD programs within 1,000 feet of a school) but not on facilities serving people without SUD;**

▶ **Special requirements – like a permit, variance, or public hearing – on SUD programs but not on similarly situated facilities that do not serve people with SUD; and**

▶ **Occupancy limits on group homes serving people with SUD but not on facilities serving people without SUD.**

To justify facially discriminatory laws or policies, the government must present legitimate reasons – not speculation or generalized fears about the expected consequences of an SUD program. The government’s justification needs to show how the law or policy (1) furthers a legitimate safety concern (not based on stereotypes),¹³ or (2) benefits people with disabilities.¹⁴ The law or policy also must be narrowly tailored.¹⁵

¹² *Courage to Change Ranches Holding Co. v. El Paso County*, 73 F. 4th 1175, 1191 (10th Cir. 2023).

¹³ See, e.g., *Rehabilitation Support Services v. City of Albany*, No. 1:14-cv-0499, 2017 WL 3251597 at *4 (N.D.N.Y. 2017); *Nevada Fair Hous. Ctr., Inc. v. Clark Cnty.*, 565 F.Supp.2d 1178, 1182 (D. Nev. 2008) (citing *Cmty. House, Inc. v. City of Boise*, 490 F.3d 1041, 1049–50 (9th Cir.2007)).

¹⁴ See *Nevada Fair Hous. Ctr., Inc.*, 565 F. Supp. 2d, *supra* note 13.

¹⁵ See, e.g., *Human Res. Research & Mgmt. Grp., Inc. v. County of Suffolk*, 687 F. Supp. 2d 237, 257 (E.D.N.Y. 2010).

- B. **Laws or actions motivated by discriminatory intent.** When assessing whether the government acted with discriminatory intent, advocates for SUD programs can look for “direct” or “circumstantial” evidence.”

Direct evidence is typically **animus (or ill will) toward individuals with SUD**. For example, a zoning agency’s decision to deny permission for an SUD program to operate due to negative stereotypes about PWUD shows discriminatory intent. Discriminatory intent also is evident when a **similarly situated entity was treated differently** (or more favorably).¹⁶

Circumstantial evidence can be identified in several ways, including through the historical background and sequence of events leading up to a law or action, departure from ordinary procedural or substantive approaches, and legislative or administrative history.¹⁷

2. **Disparate impact** involves a facially-neutral policy that has a disproportionate impact on individuals with a disability.¹⁸ For example, a zoning law that imposes restrictions on unrelated people living together could have a disparate impact on people with disability if statistical evidence shows they are more likely to live in group homes.¹⁹ To justify a law or policy that has a disparate impact, a state or local government would need to show that the practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests – which must be supported by evidence and not be hypothetical or speculative.²⁰ The government also would need to show that no less restrictive alternative existed and that a reasonable modification was impossible.²¹
3. **Failure to make a reasonable modification** of policies or procedures that is necessary for an individual with a disability to participate in or benefit from a government activity. An example would be refusing to grant a group home a variance to a zoning requirement when it is necessary for its residents to access

¹⁶ *Pac. Shores Props, LLC v. City of Newport Beach*, 730 F. 3d 1142, 1158 (9th Cir. 2013).

¹⁷ *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 97 S. Ct 555, 50 L.Ed.2d 450 (1977).

¹⁸ U.S. DEP’T OF HOUS. & HUM. SERV. & U.S. DEP’T OF JUST., JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE: STATE AND LOCAL LAND USE LAWS AND PRACTICES AND THE APPLICATION OF THE FAIR HOUSING ACT 4-5 (2005), <https://www.justice.gov/opa/file/912366/dl>; *Oxford House, Inc. v. Twp. of Cherry Hill*, 799 F. Supp. 450, 461 (D. N.J. 1992).

¹⁹ See *Oxford House*, 799 F. Supp. at 461 (By requiring groups of unrelated people to meet a standard of “permanency and stability” and not imposing that standard on groups of people related by marriage or blood, Town’s application of its zoning ordinance had a disparate impact on people with SUD; such individuals were more likely to need a group living arrangement for their recovery process than people without a disability).

²⁰ *Joint Statement of HUD and DOJ*, *supra* note 18, at 4-5.

²¹ See *Oxford House*, 799 F. Supp. at 462.

housing equal to that of people without disabilities.²² Whether a modification is reasonable requires a case-by-case assessment.²³

How the Government Might Justify its Actions

A government entity does not engage in illegal discrimination if it shows that the SUD program creates a **“direct threat” to the safety of others**²⁴ – a standard that is extremely difficult to satisfy. The entity **must make an individualized assessment**, based on reasonable judgment **that relies on current medical knowledge or the best available objective evidence**, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.²⁵ **Reliance on assumptions, stereotypes, or speculation does not satisfy the requirement for rigorous, individualized proof.**

A government entity does not have to provide a reasonable modification if it proves that the requested modification would “fundamentally alter” the program.²⁶ In zoning cases, courts have looked at factors such as whether a proposed change would unduly burden municipal services, police or emergency services, traffic or street parking, and population density. Courts require specific evidence of an adverse impact, rather than speculation or anecdotal evidence.²⁷ Vague assertions, such as that a recovery house will “compromise the residential character” of a neighborhood, do not demonstrate a fundamental alteration of a town’s zoning scheme.²⁸

What to Do About Discrimination

Persons who are “aggrieved” by violation of these laws **may bring private lawsuits or file complaints** with the applicable government agency, which can investigate, enter into settlements, and bring lawsuits. Lawsuits challenging government

²² *Id.*

²³ *Joint Statement of HUD and DOJ, supra* note 18, at 9.

²⁴ See 28 CFR §§ 35.130(h), 35.139 (ADA), 42 U.S.C. § 3604(f)(9) (FHA).

²⁵ 28 CFR § 35.139(b) (ADA); *Joint Statement of HUD and DOJ, supra* note 18, at 9.

²⁶ 28 C.F.R. § 35.130(b)(7)(i) (ADA).

²⁷ See, e.g., *Oconomowoc Residential Programs, Inc. v. City of Milwaukee*, 300 F.3d 775, 785-87 (7th Cir. 2002) (finding that the City did not prove that an SUD program would fundamentally alter the neighborhood; its predictions of increased calls for security and emergency services were not substantiated).

²⁸ See, e.g., *Oxford House, Inc. v. Twp. of Cherry Hill*, 799 F. Supp. 450, 462-63 (D. N.J. 1992) (ruling that the Township’s “residential character” would not be fundamentally altered by the recovery house, where there was no evidence of neighbor complaints or adverse neighborhood impact at Oxford House’s other three recovery homes).

restrictions on SUD programs are typically brought by the program operator and/or its patients, residents, or participants.

Title II of the ADA is enforced by the [U.S. Department of Justice](#), the Rehabilitation Act is enforced by the agency providing the federal *financial* assistance (DOJ's Civil Rights Division directs individuals to the appropriate agency), and the Fair Housing Act is enforced by the [U.S. Department of Housing and Urban Development](#). Attorneys General offices in some states also may have authority to enforce these laws.

The remedies vary depending on the law and enforcement venue but include compensatory damages, civil penalties, and orders to take or refrain from action.²⁹ For example, a court could order the local zoning entity to provide a permit or to not enforce a discriminatory ordinance.

WHEN RESTRICTIONS ON SUD PROGRAMS ARE DISCRIMINATORY

Dozens of lawsuits brought over several decades have successfully challenged government activities that exclude or restrict programs serving PWUD. Some of the most common restrictions that courts found discriminatory are laws that expressly exclude SUD programs or impose special restrictions on them, such as spacing or distance limitations, special use permits, and notice requirements.

Following is a selection of court decisions, based on the type of restriction. Some rulings are in favor of the program asserting discrimination, while some rulings support the government's position. The selection of cases is by no means exhaustive; it is intended to provide illustrations of key concepts and how courts apply them to common situations. Advocates for SUD programs should research applicable court decisions in their own jurisdictions. When doing that, note that cases involving facilities serving people with disabilities other than SUD also are relevant.

Bans on Methadone or Other SUD Programs

Total bans on methadone or other SUD programs are generally found facially discriminatory and without a legitimate, non-discriminatory justification.

²⁹ 42 U.S.C. § 12133 (ADA); 29 U.S.C. § 794a (R.A.); 42 U.S.C. §§ 3613 and 3614 (FHA).

MX Group, Inc. v. City of Covington, (E. Dist. KY, 2000, affirmed by 6th Circuit Court of Appeals, 2002) – finding that the City of Covington’s moratorium on all SUD treatment programs – including methadone programs – violated Title II of the ADA because it was facially discriminatory and the City failed to provide a legitimate justification. The Assistant Chief of Police testified that people in other cities claimed that methadone programs generated crime, but the court dismissed this testimony as nothing but “stereotypes and generalized fears” rather than legitimate safety concerns.³⁰ There was “no convincing evidence that any such evils actually will occur.”³¹

West Easton Two v. Borough Council of West Easton, (E.D. Penn 2020) – finding that West Easton’s zoning ordinance allowing “residential treatment centers” but prohibiting them from providing methadone treatment was facially discriminatory and could violate Title II of the ADA.³² **There was no actual evidence that any of the proposed clients posed a significant risk, let alone a risk at all, and the City relied on stereotypes.**³³

CRC Health Group, Inc. v. Town of Warren, (D. ME 2014) – finding that the Town of Warren’s moratorium on methadone clinics in all zoning areas violated Title II of the ADA. The ordinance was facially discriminatory because the Town allowed other comparable medical clinics.³⁴ The court rejected the Town’s arguments that the moratorium was necessary for “common sense safety concerns” and that it was justified by a government study associating methadone clinics with neighborhood crime.³⁵ **The court concluded there was no objectively legitimate basis for safety concerns**, and the cited study was not even about the impact of methadone clinics on the neighborhood.³⁶ While the court stated it is not necessary to show animus when challenging a facially discriminatory statute, it noted that there was strong community opposition at public meetings leading up to the ordinance, including audience members wearing “Methadon’t” buttons.³⁷

³⁰ *MX Group, Inc. v. City of Covington*, 106 F. Supp. 2d 914, 920 (E.D. Kent. 2000), aff’d, 293 F.3d 326, 336-40 (6th Cir. 2002).

³¹ *Id.*

³² *West Easton Two v. Borough Council of West Easton*, 489 F. Supp. 3d 333, 356 (E.D. Penn 2020).

³³ *Id.* at 358-59.

³⁴ *CRC Health Grp., Inc. v. Town of Warren*, No. 2:11-cv-196, 2014 WL 2444435 at *7 (D. ME 2014).

³⁵ *Id.* at *11.

³⁶ *Id.* at *12.

³⁷ *Id.* at *5.

Hispanic Counseling Center, Inc. v. Village of Hempstead, (E.D.N.Y. 2002) – finding that Village of Hempstead’s ban on all clinics and SUD treatment programs violated Title II of the ADA because it was facially discriminatory and had no legitimate, non-discriminatory justification.³⁸

Spacing or Distance Requirements on Methadone or Other SUD Programs

Spacing requirements in these cases were found facially discriminatory when they applied only to methadone or other SUD programs and did not have a legitimate, non-discriminatory justification. Courts in two of the cases found the spacing requirements non-discriminatory because they benefited people with disabilities.

Discriminatory Spacing Requirements

New Directions Treatment Services v. City of Reading, (3d Cir. 2007) – finding that a Pennsylvania law banning methadone clinics within 500 feet from many structures (including schools, churches, and residential housing) unless the local government voted to permit the program violated the ADA and Rehabilitation Act.³⁹ **The statute was discriminatory on its face because it singled out methadone clinics for different treatment.** This was true even though it allowed the local government to overcome the ban by voting in favor of a permit.⁴⁰ The court also found that the State failed to prove that the program posed a “significant risk.” Ample evidence had been presented that the program and its residents did not pose a risk, while evidence of the supposed risk was speculative:

City Council members expressed concerns about heavy traffic, loitering, noise pollution, littering, double parking, and jay walking. However, the City offered no evidence to support an association between these concerns and methadone clinics. Even if such connections existed, we are skeptical that they would qualify as the substantial harms contemplated by [Supreme Court cases].⁴¹

Bay Area Addiction Research & Treatment (BAART) v. City of Antioch, (9th Cir. 1999) – finding that Antioch’s zoning ordinance forbidding permits for new

³⁸ *Hisp. Counseling Ctr., Inc. v. Inc. Vill. of Hempstead*, 237 F. Supp. 2d 284, 293 (E.D.N.Y. 2002).

³⁹ *New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293, 304, 307 (3d Cir. 2007).

⁴⁰ *Id.* at 304.

⁴¹ *Id.* at 306.

substance use clinics, including methadone clinics, within 500 feet of any residential property was facially discriminatory, and sending the case back to the trial court.⁴² **The trial court then found that the program was likely to succeed in proving discrimination because the City had failed to show that the program would be a “significant threat” to the community.**⁴³ Several people testified that there was no increase in crime in other locations where the program operated.⁴⁴ In comparison, a neighbor’s testimony that she feared hypodermic needles would be thrown over the program’s fence into her yard, that children might walk by the clinic, and that people might climb the fence were nothing but “hypothetical or presumed risk.”⁴⁵

Nevada Fair Housing Center v. Clark County, (D. Nev. 2008) – finding that Nevada’s group home statute requiring at least 1,500 feet between “residential establishments” violated the FHA. The statute was facially discriminatory because even though it used a seemingly neutral term (“residential establishment”), the definition of “residential establishment” included only facilities for people with disabilities (“homes for individual residential care, halfway houses for recovering drug or alcohol abusers, or residential facility for groups”).⁴⁶ **The statute, therefore, singled out places where only people with disabilities live and imposed a spacing requirement not imposed on like groups.**⁴⁷ The court also found it significant that the statute imposed a requirement for the State to maintain and publicly post a registry of “residential establishments” – a requirement not imposed on other facilities housing groups without disabilities.⁴⁸ The government argued that the statute was not discriminatory because it also applied to facilities for people without disabilities. The court rejected that argument. “Even if a statute incidentally catch[es] in its net some unrelated groups of people without handicaps,” it can remain discriminatory under the FHA.⁴⁹

Habit Management v. City of Lynn, (D. Mass. 2002) – finding that City of Lynn’s zoning ordinance prohibiting methadone clinics from operating within two miles of any school violated Title II of the ADA.⁵⁰ Noting that **the ordinance effectively banned all methadone clinics because every location was within two miles of a school**, and that other clinics were permitted as of right or with special use permits, the court concluded

⁴² *Bay Area Addiction Rsch. & Treatment, Inc. (BAART) v. City of Antioch*, 179 F.3d 725, 737 (9th Cir. 1999).

⁴³ *Bay Area Addiction Rsch. & Treatment, Inc. (BAART) v. City of Antioch*, No. C 98-2651 SI, 2000 WL 33716782, at *12 (N.D. Cal. Mar. 16, 2000).

⁴⁴ *Id.* at *9-10.

⁴⁵ *Id.* at *11.

⁴⁶ *Nevada Fair Hous. Ctr., Inc. v. Clark Cnty.*, 565 F. Supp. 2d 1178, 1182 (D. Nev. 2008).

⁴⁷ *Id.* at 1183.

⁴⁸ *Id.* at 1184.

⁴⁹ *Id.* at 1185.

⁵⁰ *Habit Mgmt., Inc. v. City of Lynn*, 235 F. Supp. 2d 28, 29 (D. Mass. 2002).

that the ordinance facially discriminated against methadone clinics and “denied the benefit of having the city make a zoning decision without regard to the disabilities of its clients.”⁵¹

Non-Discriminatory Spacing Requirements

Sailboat Bend Sober Living v. City of Fort Lauderdale, (11th Cir. 2022) – finding that a 1,000-foot spacing requirement for group homes for people with disabilities did not violate the FHA or ADA because overall, the zoning code treated such residences more favorably than similarly-situated non-disabled people (single family residences). The ordinance allowed up to 10 unrelated people to live together in a group home for people with disabilities but only allowed three unrelated people to live together in other forms of housing.⁵²

Ohio House v. City of Costa Mesa, (C.D. Cal. Nov. 16, 2022) – finding that a zoning ordinance that imposed a 650-foot separation requirement between “sober living homes” and other SUD-related treatment facilities did not violate the FHAA, where overall, the ordinance had more benefits for sober living homes than for boarding houses serving similarly situated people without disabilities.⁵³

Special Requirements (such as a Special Use Permit, Notice, or Hearing)

Special requirements are discriminatory when they single out people with SUD without legitimate justification or are motivated by animus toward people with SUD. In contrast, they are not discriminatory when they are not uniquely applied to SUD programs or when SUD programs are materially similar to other types of entities subject to the requirement.

Discriminatory Special Requirements

Human Res. Research & Mgmt. Grp., Inc. v County of Suffolk, (E.D.N.Y. 2010) – finding that County’s four different zoning requirements for “substance abuse houses” were facially discriminatory and violated the FHA because they

⁵¹ *Id.*

⁵² *Sailboat Bend Sober Living v. City of Fort Lauderdale, Fla.* 46 F.4th 1268, 1274-75 (11th Cir. 2022), *aff’d*, 122 F.4th 1097 (9th Cir. 2024).

⁵³ *Ohio House v. City of Costa Mesa*, No. 8:19-cv-01710, 2022 WL 18284406, at *4-5 (C.D. Cal. Nov. 16, 2022).

were not imposed on other people seeking to live in the County and had no legitimate justification. The requirements were (1) a site selection process requiring notice and an approval process, (2) a certified site manager on site 24 hours a day, (3) six-person occupancy ceiling, and (4) licensure requiring a fee and inspection.⁵⁴ The County offered justifications for each requirement, such as that the site selection process ensured appropriate distribution of recovery houses, the onsite manager would support and supervise residents, the six-person limit would avert overcrowding and ensure proper supervision, and the licensing requirement would ensure legal compliance. The court found them all unavailing because they were countered by more compelling evidence and not narrowly tailored.⁵⁵

Smith-Berch v. Baltimore County, (D. Md. 1999) – finding that Baltimore County’s “special unwritten methadone policy” requiring all methadone clinics to undergo a public hearing but allowing other drug treatment programs and medical offices to locate as of right could violate Title II of the ADA.⁵⁶ **The court ruled that a jury could find the policy facially discriminatory because no other medical treatment or drug treatment facilities were subject to the requirement.**⁵⁷ The court also noted the “intense community opposition” to the proposed siting of a methadone program, with the testimony focused on the “type of individual” who would seek treatment there.⁵⁸

Non-Discriminatory Special Requirements

Get Back Up, Inc v. City of Detroit, (E.D. Mich. July 1, 2013) – finding that a conditional residential use permit requirement for “residential substance abuse facilities” was not facially discriminatory under the FHA and ADA because such permits also were required for multi-family dwellings, emergency shelters, pre-release centers, sorority and fraternities, and rooming houses – which did not all serve people with disabilities.⁵⁹ Moreover, facilities that could locate “as of right” (e.g., nursing homes) were not materially similar to “residential substance abuse facilities”; nursing homes are a “uniquely sedate and unburdensome use, have relatively little impact on traditional zoning concerns like noise and traffic, and may warrant special treatment on the grounds that a city desperately needs nursing care.”⁶⁰

⁵⁴ *Human Res. Research & Mgmt. Grp., Inc. v Cnty. of Suffolk*, 687 F.Supp.2d 237, 241 (E.D.N.Y. 2010).

⁵⁵ *Id.* at 261-267.

⁵⁶ *Smith-Berch v. Baltimore Cnty., MD.*, 68 F.Supp.2d 602, 622-24 (D. Md. 1999).

⁵⁷ *Id.*

⁵⁸ *Id.* at 625.

⁵⁹ *Get Back Up, Inc v. City of Detroit*, No. 11-13909, 2013 WL 3305672, at *4-7 (E.D. Mich. July 1, 2013) *aff'd*, 606 Fed. App'x 792 (6th Cir. 2015).

⁶⁰ *Id.* at *6-7.

Allentown Victory Church v. City of Allentown, (E.D. Pa. 2022) – finding that Allentown’s residential zoning requirement for a “variance” for “institutions for children, aged and disabled” but a “special exception” for “other living arrangements for the disabled” was not facially discriminatory. The plaintiff’s proposed recovery facility fell under the category requiring a variance, which was more burdensome to obtain. The court reasoned that requirement was not facially discriminatory because the plaintiff had not shown why the type of recovery facility it wanted to open was materially similar to the types of facilities only requiring a special exception.⁶¹ “[Th]is is not a case where a zoning ordinance imposes burdens unique to disabled residents.”⁶²

Rehabilitation Support Svc. v. City of Albany, (N.D.N.Y. 2017) – finding that an Albany zoning requirement that “community residences” for people with disabilities obtain a use variance to operate in residential districts did not violate the FHA and Title II of the ADA because they were not uniquely singled out (rooming houses and apartment buildings also had to get a variance), and there was no evidence that “community residences” were materially similar to the types of entities permitted as of right or with a special use permit.⁶³

Occupancy Limits

Occupancy limits typically limit the number of people who can occupy a home in a residential zone. An occupancy limit is discriminatory on its face when it singles out homes for people with disabilities without legitimate justification, but not if the limit treats people with disabilities more favorably than those without disabilities.

Discriminatory Occupancy Limits

Courage to Change Ranches Holding Company v. El Paso County, (10th Cir. 2023) – finding that a zoning code’s five-person occupancy limit violated the FHA because it was facially discriminatory. It singled out group homes for people with disabilities for a five-person occupancy limit while allowing other structured group living arrangements to have eight or more occupants, and the County failed to adequately justify the discrimination.⁶⁴ While not related to the occupancy limit, the court also found that the County

⁶¹ *Allentown Victory Church v. City of Allentown*, 625 F.Supp.3d 370, 380-81 (E.D. Pa. 2022), *aff’d*, No. 22-2817, 2024 WL 3439772 (3d Cir. July 17, 2024).

⁶² *Id.* at 382.

⁶³ *Rehabilitation Support Svc. v. City of Albany*, No. 1:14-cv-0499, 2017 WL 3251597, at *6 (N.D.N.Y. 2017).

⁶⁴ *Courage to Change Ranches Holding Co. v. El Paso Cnty.*, 73 F.4th 1175, 1196 (10th Cir. 2023).

may have illegally discriminated by prohibiting activities like mental health counseling in a half-way house operated by the plaintiff, while allowing them in other single-family settings.⁶⁵

Non-Discriminatory Occupancy Limits

Oxford House v. City of St. Louis, (8th Cir. 1996) – finding that the zoning code’s occupancy limit of eight people for a “group home” did not violate the FHA because it treated people with disabilities more favorably than people without disabilities. Only three unrelated people without disabilities could live in a single-family dwelling.⁶⁶ The court also concluded that there was a rational basis for the eight-person limit.⁶⁷

Transient Use Limits

Zoning laws sometimes limit the number of times a residence can be rented to different people during a year. While these laws may have legitimate reasons, such as limiting the impact of tourism and short-term rentals on residential neighborhoods, they also have been illegally used to restrict or exclude recovery housing for people with SUD.

Discriminatory Transient Use Limits

Pacific Shores Properties, LLC v. City of Newport Beach, (9th Cir. 2013) – ruling that the lower court should not have dismissed a case challenging a transitory use ordinance’s requirement that group homes get a special use permit to open in most residential areas. The court found that even though the ordinance was not facially discriminatory, the case should proceed to trial on whether it was enacted with discriminatory intent in violation of the ADA and FHA. There was strong evidence that the city’s “sole objective in enacting and enforcing its ordinance was to discriminate against persons deemed to be disabled”⁶⁸ **Even though the Ordinance’s definition of “group homes” included both homes for people recovering from SUD and group living arrangements for people without disabilities (such as rooming houses), the inclusion of group homes for non-disabled people did not “cleanse the taint of discrimination....”**⁶⁹ There was much evidence that the City Council’s goal was to eliminate group homes for people in recovery. The City Council

⁶⁵ *Id.* at 1203.

⁶⁶ *Oxford House v. City of St. Louis*, 77 F.3d 249, 251-52 (8th Cir. 1996).

⁶⁷ *Id.* at 254.

⁶⁸ *Pac. Shores Props., LLC v. City of Newport Beach*, 730 F.3d 1142, 1147 (9th Cir. 2013).

⁶⁹ *Id.* at 1159.

and Planning Commission members stated their goal was not only to ban new group homes, but also to get rid of all established already.⁷⁰ Public hearings regarding the group home permit were incredibly contentious, with City residents “repeating slurs and stereotypes about persons in recovery.”⁷¹ In light of this evidence, the court held “the primary purpose of the Ordinance was to shut down group homes and prevent new ones from opening in Newport Beach, but to do so in facially neutral terms to avoid invalidation by a court.”⁷²

Caron Foundation of Florida v. City of Delray Beach, (S.D. Fla 2012) – finding that the City of Delray Beach’s ordinance limiting the number of times an owner could rent a dwelling in a single-family zone to three times per year likely violated the FHA.⁷³ Though the ordinance was not facially discriminatory because it applied equally to “transient vacationers and snowbirds,”⁷⁴ there was circumstantial evidence that it was enacted with discriminatory intent. **“The sequence of events and administrative history strongly suggest discriminatory intent.”**⁷⁵ The administrative history included “blatantly discriminatory statements” from the Planning Board members, such as calling rehabilitation facilities “a cancer,” and “starkly discriminatory” comments by community members which a city commissioner adopted by commenting “I think the public stated my views succinctly.”⁷⁶ Even though the City offered legitimate reasons for the transient use ordinance, the court found them pretextual, given the evidence of discriminatory intent.⁷⁷

Actions Involving a Single Program, such as Permit Denials, Delays, and Selective Code Enforcement

In addition to enacting laws that restrict SUD programs, governments sometimes take individual action against SUD programs, such as by denying permits or selectively enforcing zoning or building codes. Such actions can violate anti-discrimination laws for the same reasons discussed above.

⁷⁰ *Id.* at 1153-55.

⁷¹ *Id.* at 1154.

⁷² *Id.* at 1163.

⁷³ *Caron Found. of Fla, Inc. v. City of Delray Beach*, 879 F. Supp. 2d 1353, 1372 (S.D. Fla 2012).

⁷⁴ *Id.* at 1367.

⁷⁵ *Id.* at 1371-72.

⁷⁶ *Id.* at 1369-71.

⁷⁷ *Id.* at 1372.

Discriminatory Actions

Innovative Health Systems v. City of White Plains, 117 F.3d 37 (2d Cir. 1996) – affirming the lower court’s decision that the City’s denial of a permit for an SUD program’s relocation likely violated Title II of the ADA and the RA because it was motivated by the disability of the individuals to be served.⁷⁸ The public hearings and submitted letters were “replete with discriminatory comments about drug- and alcohol-dependent persons based on stereotypes and general unsupported fears.”⁷⁹ Though the City argued that their decision was not influenced by such comments, the court ruled that **“a decision made in the context of strong discriminatory opposition becomes tainted with discriminatory intent even if the decision-makers personally have no strong views on the matter.”**⁸⁰ Here, the circumstantial evidence showed such taint because the Zoning Board ignored the Building Commissioner’s and Corporation Counsel’s opinions that the use was permitted and could not explain why health care facilities providing similar services to people without SUD were permitted in the zone.⁸¹ “The lack of a credible justification for the zoning decision raises an additional inference that the decision was based on ...chemical-dependent status” of the patients.⁸²

Next Step Recovery Home, Inc. v. Exec. Director, IN Dept of Homeland Security, (S.D. IN, Nov. 25, 2024) – finding that the State’s classification of a group recovery home as a “Class 1” structure requiring heightened building standards – rather than a “Class 2” structure with lesser standards – likely violated the FHA, Title II of the ADA, and the RA. The court found that the term “tenant” in the Class 1 classification contained such “vague and undefined terms” that the defendants “interpret[ed] it fluidly to always classify persons with disabilities in group homes as individual ‘tenants,’ but not similarly situation persons without disabilities, without justification.”⁸³ This was disparate treatment discrimination.⁸⁴ The court also ruled that **the State’s failure to provide a variance from all Class 1 requirements as a “reasonable accommodation” likely constituted discrimination.**⁸⁵

Chestnut Hill, NY v. City of Kingston, (N.D.N.Y. Jul. 15, 2024) – allowing case to proceed where a group home claimed that the City’s denial of an application

⁷⁸ *Innovative Health Sys v. City of White Plains*, 117 F.3d 37, 49 (2d Cir. 1996).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Next Step Recovery Home, Inc. v. Exec. Dir., Ind. Dep’t of Homeland Sec.*, 755 F. Supp. 3d 1077, 1079 (S.D. Ind. 2024).

⁸⁴ *Id.*

⁸⁵ *Id.* at 1092.

to renew the group home’s special use permit violated the FHA and Title II of the ADA. **It was plausible to infer that discriminatory animus against people with disabilities was a significant factor in the Planning Board’s denial of the permit, where at a public hearing, neighbors testified about residents’ disabilities** (e.g., inability to stand, appearance of intoxication, and discarded needles). Though the hearing was four months before the denial, there was other evidence – including alleged factual inaccuracies about fire safety violations in the resolution denying the permit – that discriminatory animus motivated the ultimate decision.⁸⁶

South Middlesex Opportunity Council v. Framingham, (D. Mass. 2010) – allowing case to proceed to trial on allegations that City’s delay in issuing a permit for an SUD program’s relocation violated the FHA, ADA, and RA. Even though the City eventually issued the permit, the delays in and of themselves could be discriminatory if they were caused in part by discriminatory intent.⁸⁷ The court found sufficient evidence of discriminatory intent, including through repeated interference by the Board of Selectman and through officials’ comments showing animus toward people with SUD; **one official admitted that he was “prejudiced” against individuals with drug addiction and alcoholism**, whom he believed would “steal huge amounts of private property” in order to maintain their habits, and another official opposed the relocation due to the belief that the residents would be “criminals”.⁸⁸

Non-Discriminatory Actions

Affinity Healthcare Grp. Voorhees LLC v. Township of Voorhees, (3rd Cir. Jan. 18, 2024) – affirmed the lower court’s dismissal of an opioid treatment program’s claims that the Township’s denial of permits and permitting procedures violated Title II of the ADA and the RA. The court noted that the zoning ordinance’s separate classifications for medical “offices” and “clinics” were facially neutral, and the Town did not subject the program to different procedures.⁸⁹ The court did not agree with the plaintiff’s characterization of some of the Board’s questions during the application process as stigmatizing and found no evidence that the public’s stigmatizing comments influenced the decision-makers – particularly because the court thought the Township’s justifications for denying the permit were legitimate. Notably, the lower court⁹⁰ contrasted the Township’s legitimate analysis and decision-making with the

⁸⁶ *Chestnut Hill, NY v. City of Kingston*, 1:23-cv-01024, 2024 WL 3415116, at *10 (N.D.N.Y. Jul. 15, 2024) (Note that in a 2023 case, the court found the denial of an earlier permit application non-discriminatory: *Chestnut Hill v. City of Kingston*, 698 F. Supp. 3d 399 (N.D.N.Y. Oct. 13, 2023)).

⁸⁷ *South Middlesex Opportunity Council v. Framingham*, 752 F.Supp.2d 85, 87 (D. Mass. 2010).

⁸⁸ *Id.* at 107.

⁸⁹ *Affinity Healthcare Grp. Voorhees, LLC v. Twp. of Voorhees*, No. 22-2769, 2024 WL 195471, at *7 (3d Cir. Jan. 18, 2024).

⁹⁰ *Affinity Healthcare Grp. Voorhees, LLC v. Twp. of Voorhees*, 624 F. Supp. 3d 494 (D.N.J. 2022).

discriminatory denial of a zoning permit in *Innovative Health Systems* (above), where there was evidence that the Zoning Board acted in response to the community’s animus and the Zoning Board ignored the Building Commissioner’s and Corporation Counsel’s opinions that the use was permitted and could not explain why health care facilities providing similar services to people without SUD were permitted in the zone.

Sailboat Bend Sober Living, LLC v. City of Ft. Lauderdale, Fla., 46 F.4th 1268 (11th Cir. 2022) – affirming the lower court’s decision that there was not sufficient evidence that the City selectively enforced its fire code against a sober living facility in violation of the FHA and Title II of the ADA.⁹¹ The lower court found the plaintiff presented no “direct” evidence of discrimination, and its “circumstantial evidence” was insufficient.⁹² The plaintiff had argued that the fire department had ordered it to remove its central air conditioning and install window units instead, but then cited the plaintiff for violating the fire code with the window units. The court, however, concluded that it was the plaintiff’s own decision to use window units instead of replacing the central air conditioning with a code-compliant one. “Contrary to Sailboat Bend’s suggestion, then, the City did not bait it into code violations.”⁹³

Implications for Harm Reduction Programs

Courts have not yet weighed in on how these federal anti-discrimination laws apply to restrictions on harm reduction programs, such as syringe services programs (SSPs). However, the laws should apply in similar ways. Restrictions on harm reduction programs are often like those applied to SUD treatment programs (see “Introduction”) and are motivated by the same type of stigma and animus. There are some different considerations for harm reduction programs, which advocates and opponents of harm reduction siting should bear in mind:

- **Protections for people currently engaging in the illegal use of drugs apply to denial of health services.** As noted above, the ADA and related anti-discrimination laws prohibit denying health services based on current illegal use of drugs.⁹⁴ Restricting the ability of a harm reduction program to open or function denies

⁹¹ *Sailboat Bend Sober Living, LLC v. City of Ft. Lauderdale, Fla.*, 46 F.4th 1268, 1272 (11th Cir. 2022).

⁹² *Sailboat Bend Sober Living, LLC v. City of Fort Lauderdale*, 479 F. Supp. 3d 1298, 1328 (S.D. Fla. 2020).

⁹³ *Id.* at 1331.

⁹⁴ 42 USC § 12210(C); 28 CFR § 35.131(b)(1) (ADA); 28 USC § 705(20)(C)(3).

individuals access to health services, and it is generally done because the individuals needing the services are currently using drugs illegally.

- Direct threat defense.** Governments might argue that harm reduction programs constitute a “direct threat” to the safety of the participants or others. (See “How the Government Might Justify Its Actions.”) They might point to the provision of syringes and other safer use supplies as “enabling drug use” and thereby endangering the lives of the participants, or as posing a direct threat to people in the community (i.e., through syringe litter, increased drug use, and crime). But the direct threat defense must be based on objective, individualized evidence, not stereotypes and assumptions. Contrary to popular perception, SSPs do not increase crime in their local communities and do not increase illegal drug use.⁹⁵ In fact, people who inject drugs and participate in SSPs are five times likelier to enter treatment and three times likelier to stop using illicit drugs than those who do not participate.⁹⁶ Further, SSPs are associated with a 50% reduction in viral hepatitis and HIV, can reduce overdose deaths, and have been shown to reduce the presence of improperly disposed syringes.⁹⁷
- Implications of drug paraphernalia and other laws.** Some of the challenges to SSPs have centered on whether they violate laws prohibiting distribution of “drug paraphernalia.”⁹⁸ However, at least one court has found that an SSP did not violate drug paraphernalia laws.⁹⁹ Moreover, most states now exempt SSPs and their participants from drug paraphernalia laws.¹⁰⁰ Yet opponents of SSPs might assert that purported violation of drug paraphernalia laws (in states that don’t exempt SSPs) or similar laws provides a legitimate, non-discriminatory reason to oppose an SSP, and therefore, a potential defense to an ADA challenge.

These **anti-discrimination protections also might apply when authorities seek to block the operation of an overdose prevention center (OPC)** – a facility permitting people to use drugs on the premises, under supervision of trained professionals, while

⁹⁵ LAPP, *Syringe Services Programs: Summary of State Laws*, *supra* note 1 at 5 (citing CTR. FOR DISEASE CONTROL & PREVENTION, *Summary of Information on the Safety and Effectiveness of Syringe Services Programs (SSPs)* (2024), <https://www.cdc.gov/syringe-services-programs/php/safety-effectiveness.html#:~:text=Syringe%20services%20programs%20can%20reduce,and%20providing%20on%20aloxone%20to%20them>).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ See, e.g., *State of New Jersey v. City of Atlantic City*, 379 N.J. Super. 515 (App Div. 2005) (affirming trial court decision that municipal ordinance authorizing needle exchange program was invalid because it conflicted with the provisions of the Code of Criminal Justice that prohibited persons from using or assisting others in using controlled dangerous substances). Notably, this decision was superseded by the 2006 enactment of the Bloodborne Disease Harm Reduction Act (2006 N.J. S.N. 494), authorizing SSPs.

⁹⁹ See, e.g., *Spokane Cnty. Health Dist. V. Brockett*, 120 Wash. 2d 140, 839 P.2d 324 (1992) (finding that needle exchange program did not violate State law prohibiting distribution of drug paraphernalia).

¹⁰⁰ LAPP, *Syringe Services Programs: Summary of State Laws*, *supra* note 1 at 5.

also generally offering other support services.¹⁰¹ The OPC could invoke some of the same arguments discussed above. Government authorities, on the other hand, might argue that their opposition is not based on the participants' drug use per se, but on its illegality, and that OPCs violate the federal Controlled Substances Act.¹⁰²

NOTE: Advocates for harm reduction programs have had some success overcoming opposition through invoking laws other than anti-discrimination laws. For example, a Colorado court invalidated a local ordinance that prohibited syringe exchange programs, finding that it was preempted by a State law authorizing the establishment of such programs.¹⁰³ Additionally, a Massachusetts court struck down a town's cease and desist order against a needle exchange program; it rejected the town's argument that the program violated statutes prohibiting the sale of needles to minors and authorizing State operation of exchange programs.¹⁰⁴ Conversely, efforts to restrict or shutter SSPs have had some success, including lawsuits by local businesses and local government entities against the State entities that authorized SSPs.¹⁰⁵

ADVOCACY STRATEGIES

Advocates for substance use programs can leverage anti-discrimination laws both to prevent restrictive actions and to challenge them once they occur. Here are some useful steps:

- 1. Engage community groups and other key stakeholders.** When first identifying a location for the program, meet with groups who might support or oppose it (e.g., community associations, businesses, law enforcement, elected officials, and health care advocates). Find allies, listen to and respond to concerns (see step 3, below), and provide education about SUD services, and the program's track record. Don't forget to line up support within your own organization's corporate structure, such as board of directors or corporate owners.

¹⁰¹ Joseph G. Rosen, et. al., *"Make yourself un-NIMBY-able": stakeholder perspectives on strategies to mobilize public and political support for overdose prevention centers in the United States of America*, HARM REDUCTION J., Feb. 2024, at 1, 2.

¹⁰² See *United States of America v. Safehouse*, 985 F.3d 225 (3d Cir. 2021) (citing 21 USC § 856(a)(2)).

¹⁰³ *Colo. Health Network, Inc. v. City of Pueblo*, No. 2024CV30274, (Colo. Dist. Ct., Pueblo Cnty., Aug. 22, 2024) (order re: determination of the merits of the case).

¹⁰⁴ *Aids Support Grp. of Cape Cod, Inc. v. Town of Barnstable*, 477 Mass. 296, 76 N.E. 3d 969 (2017). See also *Spokane Cty. Health Dist.*, *supra* note 99.

¹⁰⁵ See Luke Money & Faith E. Pinho, *Court order all but bans mobile needle exchange program in Costa Mesa, other O.C. cities*, LA TIMES: DAILY PILOT (Oct. 25, 2019), <https://www.latimes.com/socal/daily-pilot/news/story/2019-10-25/court-order-all-but-bans-mobile-needle-exchange-program-in-costa-mesa-other-o-c-cities>.

2. **Learn the legal requirements for opening and operating** (e.g., zoning, licensure, fire/safety codes, environmental reviews) and make a plan to comply with them. If a government entity is considering (or has imposed) restrictions or other actions to block your program, continue with step 3.
3. **Assess whether the restrictions or actions might be illegal discrimination.**
Ask these questions:

Which category of discrimination might this be?

- ✓ Outright ban?
- ✓ Distance or spacing requirement?
- ✓ Special Requirement, such as a special use permit, notice, or hearing?
- ✓ Occupancy limit?
- ✓ Transient use limit?
- ✓ Actions involving a single program, such as permit denial, delay, or selective code enforcement?

Read the case descriptions in the relevant section of this guide. Do the restrictions or actions sound more like the cases where the court found discrimination, or like those where they did not?

Are the restrictions facially discriminatory?

Recall that a law or rule is facially discriminatory if it explicitly singles out people with disabilities for different treatment (e.g., “no methadone programs in zoning district X” or “special permit required for methadone programs” but no other type of health care facility). Because the discriminatory intent is obvious from the face of the ordinance, it is unnecessary to provide other evidence of discriminatory intent.

If facially discriminatory, does the government have a legitimate justification for treating this population differently, or does the provision benefit people with disabilities?

Remember that a justification is not “legitimate” if it is based on generalizations or myths and stereotypes about people with SUD or otherwise unsupported by objective evidence.

Is there evidence of discriminatory “intent?”

Remember, unless a law or rule is facially discriminatory, you will need other evidence of discriminatory intent to prove “disparate treatment” discrimination. **Ask:**

- ✓ **Was animus or stigma toward people with SUD or other disabilities a motivating factor when lawmakers enacted (or proposed to enact) the law at issue or took other action?** Is there “direct” evidence of discrimination, such as lawmakers acting in response to their own – or community members’ – animus or bias against people with SUD? Consider comments made at public hearings or town halls (seek transcripts, if necessary), written comments and letters to government decision-makers, as well as comments in the media (including social media).
- ✓ **Is there “circumstantial” evidence of discrimination?** Such evidence can be found in the historical background and sequence of events leading up to the decision or action, departure from ordinary procedural or substantive approaches, and legislative or administrative history. Read the case descriptions for *Caron Foundation of Florida v. City of Delray Beach* and *Innovative Health Systems v. City of White Plains*, in which courts found discrimination through circumstantial evidence. Is there similar evidence here?

Even if an assessment indicates that there may not be discrimination, continue with step 4 because this information could still support advocacy.

4. **Marshal evidence about why siting this program will not cause the harms opponents fear and why the oppositions’ “justifications” are not legitimate.** It is critical to address all concerns opponents articulate (e.g., loitering, crime, public drug use, traffic, property values) with countervailing, objective data. If the program has operated in that location or elsewhere, provide evidence that the program did not result in those consequences – and maybe even reduced some. Because fear of increased crime is so often a concern, cite studies showing that SUD treatment programs do not increase local crime.¹⁰⁶ For OPCs, a study

¹⁰⁶ See, e.g., C. Debra M. Furr-Holden, et al., *Not in My Back Yard: A Comparative Analysis of Crime Around Publicly Funded Drug Treatment Centers, Liquor Stores, Convenience Stores, and Corner Stores in One Mid-Atlantic City*, 77 J. STUD. ON ALCOHOL & DRUGS 17 (2016) (finding no increase in violent crime by publicly funded “drug treatment centers” as compared to other retail entities in several Baltimore neighborhoods); Samuel R. Bondurant, et al., *Substance Abuse Treatment Centers and Local Crime* (Nat’l Bureau of Econ. Rsch., Working Paper No. 22610, 2016) (study of SUD treatment programs in 48 states showed that county-level expansions of treatment facilities *significantly reduced both violent and financially motivated crimes in the county*, particularly more serious crimes).

showed no significant changes in violent crimes or property crimes, 911 calls for crime or medical incidents, or 311 calls regarding drug use or unsanitary conditions near two OPCs in NYC.¹⁰⁷ The study also showed a significant decline in low-level drug enforcement.¹⁰⁸ For SSPs, cite the evidence in the “direct threat defense” discussion, above.

5. **Send a letter to the decisionmakers – or testify – about why the restrictions violate the ADA** and, if applicable, the RA and FHA. The template in the Appendix can help. It is best to have a lawyer write the letter or testimony.

Recommendations for Public Officials

- **Ensure that decision-makers understand anti-discrimination protections and act accordingly.** Proposed laws or other actions relating to SUD programs must be evaluated under legitimate zoning and siting standards. They cannot be based on stereotypes or assumptions about people with SUD, including unsubstantiated concerns about a program’s impact on crime and local drug use. Issues like parking, traffic, and conformance with zoning and safety standards must be assessed as they would for any type of entity, based on objective evidence.
- **Speak out if community members or other government officials voice opposition to the program based on discriminatory criteria.** Educate the community and government officials that local and state governments may not discriminate against people with SUD or their service providers. Call for a fair, non-discriminatory evaluation of the proposed use. Invite health officials to do anti-stigma education and explain SUD and the benefits of SUD services.
- **Advocate for statewide legislation addressing not-in-my-backyard (NIMBY) issues,** such as a State law prohibiting local laws that bar SUD programs or impose on them conditions not imposed on other health care facilities.
- **State attorneys general should enforce anti-discrimination protections** when local governments illegally block SUD programs.

¹⁰⁷ Aaron Chalfin, et al., *Overdose Prevention Centers, Crime, and Disorder in New York City*, JAMA NETWORK OPEN, Nov. 2023, at 1.

¹⁰⁸ *Id.*

Where Can You Learn More?

For information about how the Fair Housing Act addresses local opposition to programs serving people with disabilities, this guidance is useful: *Joint Statement of the Department of Housing and Urban Development and the Department of Justice: State and Local Land Use Laws and Practices and the Application of the Fair Housing Act*

For hands-on strategies to address opposition to SUD programs in New York, please read Legal Action Center's forthcoming companion piece to this guide: *Developing an Effective Advocacy Strategy to Overcome Local Opposition to SUD Programs in New York*.

Appendix

Template Letter to a Government Entity Engaging in Zoning Discrimination¹ (Download a [Word version of this letter here.](#))

[Insert method of delivery, e.g., “By Overnight Mail”]

[Insert date]

[Insert name/title of recipient]

[Insert address of recipient]

Dear [insert recipient name/title]:

[Describe who is writing the letter and in what capacity. Summarize the government action at issue. State that the government action violates (or will violate) federal anti-discrimination laws. Describe the action you want the government entity to take instead.]

Examples:

We are writing to you on behalf of XYZ Opioid Treatment Program to request that the City defeat proposed Local Law #1 of Northville, which would amend the Northville Code to prohibit methadone clinics. We believe that this law, if enacted, would likely subject the City to liability under federal laws that prohibit discrimination against individuals with disabilities. OR

I am the Executive Director of ABC Harm Reduction Program. I am writing about the City of Northville’s denial of a special use permit for a syringe services program in the Uptown neighborhood. The denial of the special use permit subjects the City to liability under federal laws that prohibit discrimination against individuals with disabilities. I urge the City to reverse its decision and grant the special use permit.

[Describe the basic anti-discrimination protections for people with SUD and the programs serving them.]

Example:

The Americans with Disabilities Act (the “ADA”) and the Rehabilitation Act of 1973 (the “Rehabilitation Act”) [add the Fair Housing Act if the action involves housing] prohibit discrimination on the basis of disability. They require government entities and others to treat and evaluate individuals with disabilities objectively and fairly rather than on the basis of stereotypes and myths. It is well established that individuals with substance use disorder (SUD), including those receiving methadone or buprenorphine for opioid use disorder (OUD) have a

¹ This template letter provides general legal and advocacy information; it does not constitute legal advice.

“disability” under these laws and that the treatment programs who serve them are also protected from discrimination.² While individuals currently engaging in the illegal use of drugs have fewer protections under these laws, they may not be denied health services due to their illegal drug use.³ Local authorities must comply with these laws with respect to zoning and virtually all other activities.⁴

[Describe successful lawsuits challenging discriminatory zoning requirements. You can use the sample paragraph or modify it to focus on cases about the restriction your program is facing. Supplement it with cases from your jurisdiction: Example:

Many courts have found that local or state governments violated anti-discrimination laws when they enacted ordinances that expressly exclude SUD treatment programs⁵ or imposed special restrictions, such as spacing or distance limitations,⁶ special use permits, or notice requirements.⁷ Courts also have found that local governments engaged in illegal discrimination through laws imposing

² *MX Group, Inc. v. City of Covington*, 293 F.3d 326, 336-40 (6th Cir. 2002); *Bay Area Addiction Rsch. & Treatment, Inc. (BAART) v. City of Antioch*, No. C 98-2651 SI, 2000 WL 33716782, at *6 (N.D. Cal. Mar. 16, 2000); *Start Inc. v. Baltimore Cnty., Md.*, 295 F. Supp. 2d 569, 576-77 (D. Md. 2003); See also *Innovative Health Sys v. City of White Plains*, 117 F.3d 37, 49 (2d Cir. 1996), superseded on other grounds, *Zervos v. Verizon N.Y., Inc.*, 252 F.3d 163, 171 n.7 (2d Cir. 2001) (ruling that individuals with alcohol and drug addiction histories and their treatment providers are protected by the ADA and Rehabilitation Act).

³ 42 § USC 12210(C); 28 § CFR 35.131(b)(1) (ADA); 28 § USC 705(20)(C)(3). Further, an individual who is participating in a “drug rehabilitation” program, has completed such a program, or is otherwise “rehabilitated” is an “individual with a disability” if they “no longer” engage in the illegal use of drugs. 42 U.S.C. § 12210(b) (ADA); 45 C.F.R. § 84.69.

⁴ *Innovative Health Sys v. City of White Plains*, 117 F.3d 37, 44 (2d Cir. 1996); *Bay Area Addiction Rsch. & Treatment, Inc. (BAART) v. City of Antioch*, 179 F.3d 725, 731 (9th Cir. 1999).

⁵ See, e.g., *MX Group, Inc. v. City of Covington*, 106 F. Supp. 2d 914 (E.D. Kent. 2000), aff’d, 293 F.3d 326, 336-40 (6th Cir. 2002) (moratorium on methadone and all other SUD treatment programs violated the ADA); *West Easton Two v. Borough Council of West Easton*, 489 F. Supp. 3d 333 (E.D. Penn 2020). (zoning ordinance prohibiting “residential treatment centers” from providing methadone treatment was facially discriminatory and could violate the ADA); *CRC Health Grp., Inc. v. Town of Warren*, No. 2:11-cv-196, 2014 WL 2444435 (D. ME 2014) (moratorium on methadone clinics violated the ADA); *Hisp. Counseling Ctr., Inc. v. Inc. Vill. of Hempstead*, 237 F. Supp. 2d 284 (E.D.N.Y. 2002) (ban on all clinics and SUD treatment programs violated the ADA).

⁶ See, e.g., *New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293, 304 (3d Cir. 2007) (law banning methadone clinics within 500 feet of many structures unless local government voted to permit it violated the ADA and Rehabilitation Act); *Bay Area Addiction Rsch. & Treatment, Inc. (BAART) v. City of Antioch*, 179 F.3d 725 (9th Cir. 1999) (ordinance forbidding new substance use clinics within 500 feet of any residential property was facially discriminatory); *Nevada Fair Hous. Ctr., Inc. v. Clark Cnty.*, 565 F.Supp.2d 1178 (D. Nev. 2008) (State law requiring at least 1,500 feet between “residential establishments” violated the Fair Housing Act); *Habit Mgmt., Inc. v. City of Lynn*, 235 F. Supp. 2d 28 (D. Mass. 2002) (ordinance prohibiting methadone clinics within two miles of any school violated the ADA).

⁷ See, e.g., *Human Res. Research & Mgmt. Grp., Inc. v Cnty. of Suffolk*, 687 F.Supp.2d 237, 261-67 (E.D.N.Y. 2010) (requirements such as notice, on-site manager, and licensure fee violated the Fair Housing Act); *Smith-Berch v. Baltimore Cnty., MD.*, 68 F.Supp.2d 602, 622-24 (D. Md. 1999) (County’s “special unwritten methadone policy” requiring all methadone clinics to undergo a public hearing but allowing other drug treatment programs and medical offices to locate as of right could violate the ADA).

occupancy limits⁸ and “transient use” restrictions – especially when they were enacted in order to restrict recovery housing or had a disparate impact on such housing.⁹ Finally, courts have ruled that local governments discriminated when they denied permits for SUD programs in a discriminatory way or selectively enforced building and safety codes.¹⁰

Courts in many of these lawsuits found the prohibitions or restrictions discriminatory because they were imposed in response to bias and unsubstantiated fears about people with disabilities and were not based on objective evidence.

[Describe the action at issue and provide evidence about why the action appears discriminatory. Consider the type of evidence discussed in this resource, including statements by government officials and community members that reflect animus toward people with substance use disorder. Explain how it is similar to the cases cited in the footnotes or other cases you have found, especially cases in your jurisdiction.]

Examples:

Local Law #1’s ban on methadone programs is facially discriminatory because it singles out methadone programs for different treatment than other types of health care facilities and lacks any legitimate justification. It was enacted due to myths and stereotypes about the clients who would be served by the program. At public hearings, community members made stigmatizing comments about people who take medication for opioid use disorder, such as that they are criminals and will harm school children. Councilmember Jones stated his agreement with those concerns. The Council ignored objective evidence presented by public health officials, opioid treatment programs, and law enforcement about the effectiveness of treatment and the lack of crime near current treatment programs. Some Council members tried to justify the ordinance based on concerns about increased traffic, loitering, and double parking. However, the Council offered no evidence that methadone programs cause these problems. Even if they contributed to them in some way, as might any health care office, they would not justify a facially discriminatory law. OR

Greenville’s denial of a special use permit is discriminatory because it was based on bias against people with SUD rather than any legitimate reason. The Town denied the permit after receiving comments from community members, decrying the possible opening of the program. Several of the comments used stigmatizing

⁸ See, e.g., *Courage to Change Ranches Holding Co. v. El Paso Cnty.*, 73 F.4th 1175, 1196 (10th Cir. 2023); *Human Res. Research & Mgmt. Grp., Inc. v Cnty. of Suffolk*, 687 F.Supp.2d 237, 261-67 (E.D.N.Y. 2010).

⁹ See, e.g., *Pac. Shores Props., LLC v. City of Newport Beach*, 730 F.3d 1142 (9th Cir. 2013); *Caron Found. of Fla, Inc. v. City of Delray Beach*, 879 F. Supp. 2d 1353 (S.D. Fla 2012).

¹⁰ See, e.g., *Innovative Health Sys v. City of White Plains*, 117 F.3d 37 (2^d Cir. 1996); *South Middlesex Opportunity Council v. Framingham*, 752 F.Supp.2d 85 (D. Mass. 2010), both involving discriminatory permit denials.

language to describe prospective patients of the program and warned – without evidence – that these individuals would increase crime and lower property values. The fact that Greenville has granted special use permits to facilities providing similar services to people without SUD shows that Greenville’s purported reasons for denying the permit are pretextual.

[Provide evidence about why the program will not lead to the bad consequences cited by opponents, marshalling the type of evidence described in this resource’s section on Advocacy Strategies. You can discuss the program’s favorable outcomes and measures it takes with respect to security, loitering, litter, and other concerns cited by opponents. OTPs could address concerns about loitering or parking by explaining that as permitted under 2024 regulatory changes, only X number out of Y number of patients come to the OTP on a daily basis.

Example:

XYZ program has been successfully operating an outpatient SUD treatment program for 10 years in a residential neighborhood in Greenville, serving 500 people. The program is well respected with no reported incidents that have jeopardized anyone’s safety. Moreover, studies show that substance use disorder treatment (including methadone and other medication for OUD) decrease crime generally and that siting of OTPs and other SUD programs does not increase crime in the surrounding area.¹¹ *[SSPs can cite the studies referenced in the section of the main resource entitled Implications for Harm Reduction Programs.]*

[Discuss relevant cases and how they are similar to yours. Look through this resource for cases with facts similar to yours and research cases in your jurisdiction. Explain that courts have found that similar actions violate the ADA, Rehabilitation Act, or Fair Housing Act (if applicable).

Example:

The zoning issues voiced in the current debate are pretextual. City officials should pay special attention to the experience of City of X, which cited similar concerns to prevent the opening of an SUD treatment program. The court in *[name of case and where it was]* ruled that the City violated the ADA when officials, who bowed to the prejudices of the community, denied an SUD program a conditional use permit that restricted SUD programs.

¹¹ See, e.g., C. Debra M. Furr-Holden, et al., *Not in My Back Yard: A Comparative Analysis of Crime Around Publicly Funded Drug Treatment Centers, Liquor Stores, Convenience Stores, and Corner Stores in One Mid-Atlantic City*, 77 J. STUD. ON ALCOHOL & DRUGS 17 (2016) (finding no increase in violent crime by publicly funded “drug treatment centers” as compared to other retail entities in several Baltimore neighborhoods); Samuel R. Bondurant, et al., *Substance Abuse Treatment Centers and Local Crime* (Nat’l Bureau of Econ. Rsch., Working Paper No. 22610, 2016) (study of SUD treatment programs in 48 states showed that county-level expansions of treatment facilities *significantly reduced both violent and financially motivated crimes in the county*, particularly more serious crimes).

Because of the legal, public health, and safety implications, we urge that you *[insert desired action, e.g., “do not enact the above-referenced proposed zoning amendment and that you instead expedite the opening of desperately needed OTPs that can address Northville’s overdose crisis”]*.

Respectfully,

[insert signature, name, and title of letter’s author(s)]