

# **GROUP HOMES**

**William M. McKamie**



## **Taylor Olson Adkins Sralla & Elam LLP**

13750 San Pedro Ave., Suite 555

San Antonio, Texas 78232

210.546.2122

[mmckamie@TOASE.com](mailto:mmckamie@TOASE.com)

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

**UT Law CLE –  
Land Use Conference  
April 15, 2021**

**WILLIAM M. “MICK” McKAMIE** practices trial law and represents governmental entities as a significant portion of his practice. He is a 1972 graduate of the University of Texas. He graduated from the Texas Tech School of Law and earned a Master’s Degree in Public Administration from Texas Tech.

Mr. McKamie is a former Assistant City Attorney for Lubbock (1979-81), City Attorney for Greenville (1983-87) and Amarillo (2015-18). He has also served as City Attorney for the Cities of Boerne, Hondo, Leon Valley, Richwood, Somerville, Ferris and Cottonwood Shores, as Interim City Attorney for the Cities of Euless and Forney. He is currently the Interim City Attorney for Liberty Hill, Associate City Attorney for Boerne, General Counsel for Amarillo Local Government Corporation and General Counsel for the Victoria Housing Authority. Mick has served as General Counsel for the Laredo Housing Authority and is an Original Member of the Housing Authority Defense Attorneys.

Mr. McKamie is a Research Fellow of the Center for American and International Law, a Fellow of the College of the State Bar of Texas, and a Life Fellow of the Texas Bar Foundation. He is Board Certified in Civil Trial Law, Texas Board of Legal Specialization (1992). He was the first to be elected twice as Chair of the Government Law Section of the State Bar of Texas. In 2012 he received a Certificate of Merit in Municipal Law from the Texas City Attorneys Association. He has been recognized in Best Lawyers in America, Best Lawyers in Texas (serves on selection committee), Best Lawyers in San Antonio, and Super Lawyers.

Mr. McKamie is the 2011 Recipient of the Marvin J. Glink Private Practice Local Government Attorney Award, presented by the International Municipal Lawyers Association to recognize outstanding service to the public.

Mick is the 2019 recipient of the International Municipal Lawyers Association Charles S. Rhyne Lifetime Achievement Award, the most prestigious award in the field of municipal law and practice.

Mick is admitted to practice in all Texas state courts, all federal district courts in Texas, the Fifth and Third Circuit Courts of Appeals, and the United States Supreme Court.

# GROUP HOMES

## Introduction

The Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3631 (“FHAA” or the “Act”) impact all state and local zoning laws and land use regulations. Restrictive zoning laws that limit housing choices for persons with disabilities were targeted by the FHAA. Lawsuits brought by persons claiming disabilities and by the Department of Justice have been filed in virtually every jurisdiction, and many have successfully challenged the use of zoning laws to prohibit or limit group homes and other housing arrangements for people with disabilities.

The FHAA was enacted in 1988 to clearly and expressly extend the protections of the 1968 Fair Housing Act to people with disabilities. Congress stated “the right to be free of housing discrimination is essential to the goal of independent living.” H.R. Rep. No. 100-711, at 13 (1988). The purpose of the FHAA extension to cover people with disabilities is to live or that discourage or obstruct the choices of persons with disabilities to “live where they want to live.” in a community, neighborhood or development. 24 C.F.R. §§ 100.50(b), 100.70(a). The seminal case of *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731-732 (1995) provides that the Act is broadly construed, as the Fair Housing Act is in my opinion the most remedial of Federal laws now in force. Importantly, constitutional challenges to the application of the FHAA to local zoning laws land use regulations and decisions have been made and resolved in favor of full application of the Act. *Groome Resources, Ltd., L.L.C. v. Parish of Jefferson*, 234 F.3d 192, 200 (5th Cir. 2000).

The application of zoning laws and direct land use regulation to group homes that serve as a residential placement for handicapped persons are by far the most commonly challenged local regulations under the FHA, and will serve as the basis for this paper. But note that other forms of local regulation can also raise protections of the Act. *McGary v. City of Portland*, 386 F.3d 1259, 1264 (9th Cir. 2004) (Nuisance ordinance challenge).

## Protections of Handicapped Persons

The Act protects people with handicaps. "Handicap" is defined broadly and includes those persons with physical or mental impairments which substantially limit one or more of their major life activities. 42 U.S.C. § 3602(h). 24 C.F.R. § 100.201. "Major life activities" include, but are not limited to, caring for one's self, walking, seeing, hearing, speaking, breathing, learning, and working. 24 C.F.R. § 100.201. Obviously, many disabled persons can easily meet this standard, including the mentally retarded, hearing impaired, blind and visually impaired, physical disabilities, AIDS, and similar conditions. Importantly, persons who are recovering from substance abuse are considered to have a handicap under the Act. [Note that the term ‘recovering’ is critical to the determination of disability, as current users of illegal or controlled substances are not protected by the Fair Housing Act. 42 U.S.C. § 3602(h).]

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Group Homes

Also available as part of the eCourse  
[2021 Land Use eConference](#)

First appeared as part of the conference materials for the  
25<sup>th</sup> Annual Land Use Conference session  
"Updates on Current Law on Group Homes"