



Ruthanne Fuller
Mayor

Barney Heath
Director of
Planning & Development

Malcolm Lucas
Housing Planner

Members

Esther Schlorholtz, Chair
Donna Rigg, Vice-Chair
Judy Korzenowski
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CITY OF NEWTON, MASSACHUSETTS

Fair Housing Committee

MEETING AGENDA

Date: July 10, 2024

Time: 8:30 a.m.

Place: Virtual (Zoom)

Zoom Online Meeting: <https://newtonma-gov.zoom.us/j/88508602903>

The Fair Housing Committee will hold this meeting as a virtual meeting on Wednesday, July 10, 2024, at 8:30 am. No in-person meeting will take place at City Hall. To view and participate in this virtual meeting on your smartphone, download the "ZOOM Cloud Meetings" app in any app store or visit www.zoom.us. At the above date and time, click on "Join a Meeting" and enter the following: **Meeting ID: 885 0860 2903.**

You may also join the meeting from your smartphone by dialing 1(646) 931-3860 and entering 88508602903# For audio only, call 1(646) 931-3860 and enter **Meeting ID: 885 0860 2903.**

To view and participate in this virtual meeting on your computer, at the above date and time, either copy the attached link into your browser or visit www.zoom.us, click "Join a Meeting" and enter the following **Meeting ID: 885 0860 2903.**

To view meeting documents, [click here](#).

1. Approval of June 2024 minutes
2. Inclusionary Zoning Ordinance Discussion
3. Fair Housing Training Plans
4. Discussion on Resident Experience Training
5. Fair Housing Resource List
6. Fair Housing Project Reviews
7. Subcommittee Updates



- Lottery Results & Lease-ups Sub-Committee
- Membership & Nominating Sub-Committee
- Fair Housing Award Sub-Committee

8. Fair Housing Committee Priorities Discussion

FH Protected Groups

- Promote housing choice for diverse populations to advance Affirmatively Furthering Fair Housing (AFFH), with focus on race/ethnicity, public subsidy, family status, and disability
- Promote Diversity, Equity, Inclusion and Belonging in Newton
- Promote effective processes/practices for new affordable homeownership and resales
- Promote improved practices for real estate professionals to achieve more housing choice for diverse populations
- Identify and work to overcome barriers to successful tenancies and to improve processes/practices for tenant selection in lottery and market rate multifamily rental housing

Learning/Teaching

- Enhance FH literature and website information and access for the public
- Promote FH training for real estate professionals, landlords, tenants, the public and committee members

Data and Analysis

- Promote data collection on multi-family rental and new homeownership occupancy
- Enhance Project Review of Housing Developments to advance AFFH
- Support AI/Consortium Fair Housing Testing and FH testing in Newton

Collaboration

- Collaborate with Related Newton Commissions and Committees to increase affordable housing for households of various sizes and lower incomes and to encourage increased funding for affordable housing
- Promote affordable housing production in coordination with other City commissions and committees
- Support federal, state and city initiatives that promote AFFH
- Collaborate with Human Rights Commission on Fair Housing Complaint Process
- Contribute to Newton's FH-related plans
- Address committee membership appointments with representation from Human Rights Commission and legal counsel with FH specialty

Next meeting Wednesday, September 4, 2024. No meeting in August 2024.

*Supplementary materials are available for public review in the Planning Department of City Hall (basement) the Friday before the meeting. For more information contact **Malcolm Lucas at 617.796.1149**. The location of this meeting/event is wheelchair accessible and Reasonable Accommodations will be provided to persons with disabilities who require assistance. If you need a Reasonable Accommodation, please contact the city of Newton's ADA/Section 504 Coordinator, Jini Fairley, at least two business days in advance (2 weeks for ASL or CART) of the meeting/event: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711



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CITY OF NEWTON, MASSACHUSETTS

Fair Housing Committee

MEETING AGENDA

Date: June 5, 2024

Time: 8:30 a.m.

Place: Virtual (Zoom)

Members Present: Esther Schlorholtz, Chair

Donna Rigg, Vice Chair

Judy Korzenowski

Josephine McNeil

Steve West

Members Absent: Tatjana Meschede

Staff Present:

Malcolm Lucas, Housing Planner

Jini Fairley, ADA/Sec. 504 Coordinator

Lara Kritzer, Director of Housing and Community
Development

Public Present:

Andrae Downs, Council

Beatrice Flores, Newton Housing Authority

Julia Malakie, Council

Sharyn Roberts, League of Women Voters Newton

Pam Wright, Council

Danielle, Public

Malcolm Lucas, Housing Planner served as recorder, Esther Schlorholtz, Chair, called the meeting to order at 8:32 a.m.

To view meeting documents, [click here](#).

1. Approval of May 2024 minutes

- Upon a motion by DR, SW seconded the motion. The May 2024 minutes were approved 3-2-1, with one member absent and two abstentions.



- ES welcomed all the attendees. She introduced BF, who is the new director of administration at the Newton Housing Authority. ES expressed appreciation that BF is in process of applying to become a member of the committee, as the representative of NHA.

2. Inclusionary Zoning Ordinance Discussion

- ES introduced the discussion on Inclusionary Zoning (IZ). She thanked LK for the opportunity to comment on priority areas that the committee recommends should be reviewed by the Department of Planning & Development through its consultant, as part of the city's required five-year review of IZ.
- ES referred members to the draft memo included in the package for the meeting. She thanked SW and JF for working with her to prepare the draft and provide valuable comments in preparation for the committee's review.
- ES noted that, at the last meeting, some members of City Council invited the committee to share recommendations with them once we have finalized it.
- JM suggested that in Paragraph 2 of the introduction, where it says that the committee focuses on ways to affirmatively further fair housing, there should be a fuller explanation of what the committee's role is. JM recommended further review of the role of the city in ensuring that we adhere to fair housing laws and expressed concern that our process for putting into place steps and actions that ensure there is going to be fair housing adherence need further review by the city and the committee. ES said she would more fully describe the work of the committee in the document and suggested a further discussion about JM's concerns at another meeting. She referred to the sixth agenda item on the fair housing resource list that provides some information on what the city and the committee do currently.
- ES said that the recommendations in the draft memo are divided into three categories: affordability, accessibility, and enhancement of city oversight and data collection. She discussed the strong interest by the committee, often expressed in meetings, to create housing for lower income populations at 30% and 50% or less of Area Median Income (AMI). She said the first recommendation includes reducing the average AMI of all current affordable units from 65% AMI. She discussed the second recommendation to decrease the IZ threshold below 7 units, and the third bullet which proposes creating an option for developers to opt for the in-lieu payment, using the same formula as the current formula, if the units are reduced below seven. She said that all the recommendations will be contingent on a full analysis by the consultant of feasibility.
- Councilor PW asked where the new threshold would be. She asked if it would refer to single family homes, or two to four-unit properties. ES said that all the analysis would be based on financial feasibility, noting that it could remain at 7 units. She said that the committee does not want to disincentivize new development in Newton that will create housing opportunities and encourage new affordable housing. Councilor PW said that this threshold will be reviewed at ZAP, with the threshold maybe down to four, where there might be a payment in lieu of building for 4 to 7 units. ES said that the draft recommendation was identified by the committee to encourage the feasibility analysis of the threshold. SW agreed, saying that he had heard from city staff that this was a topic that will be considered to determine if it makes financial sense. He said that for any of those lower thresholds, a lot of developers would not be good at managing these kinds of units over the long term, so that a payment in lieu made to the Housing Trust would be better for them.
- Councilor AD asked for clarification on the recommendation. She said that what she has learned at the Land Use committee indicates that the IZ percentage is making it harder to

build housing, period. She said that she would like to know if the threshold of 7 units is too high and if we need to adjust it to get more housing in the first place. ES said that the analysis of feasibility is key, and that the committee's proposal is aimed to create more affordable units with changes to IZ, but only if feasible. Councilor AD cited high costs and said that if costs and interest rates go down, then more analysis could be done. Councilor PW said that ZAP is looking at this and they have discussed it with the consultant. She said they have asked whether the current number is right, or it should be adjusted. ES said she would improve the initial statement in the memo to more strongly encourage feasibility analysis. The committee agreed to change the language in the second bullet to include an analysis of lowering "or increasing" the threshold from seven units.

- Discussion on the fourth bullet to recommend a new option to create more Tier 2 homes for families at 110% AMI was reviewed. Committee members questioned this as a priority, and all agreed to remove it from the list.
- SW reviewed the fifth bullet and said that he would do a further review of this recommendation to create Accessory Dwelling Units (ADU) for the next draft to be presented to the committee. He noted this was an attempt to respond to the many teardowns occurring in the city. He discussed the importance of ADUs to provide affordable units and said that even if the ADUs are not income-restricted, this is a way to allow more lower cost units to be built. Councilor PW noted that the state is currently considering a housing bill that will require ADUs by right in all communities. SW said there is a strong market for ADUs and JK said she completely agreed from the real estate perspective, describing the market interest she has observed in both building and occupying these units. JM cautioned that people often don't know what they are getting into when becoming landlords and JK agreed with her concerns. Counselor JM said that after the state passes its new ADU legislation, changes will also need to be made to the city's ADU ordinance. SW said that he would do a rewrite of the recommendation and change the income restriction requirement.
- JF recommended that the first bullet be revised to specifically state that the goal should be to lower the average AMI from 65% to 55% and the committee agreed, contingent on feasibility.
- The committee discussed the section of the memo on accessibility. Questions were raised about the appropriateness of adding these requirements to IZ and whether this should be a separate discussion. JF reviewed federal and state accessibility and fair housing requirements. She discussed the need for accessible and deeply affordable housing. The committee agreed to retain the first bullet on considering more ways to increase the number of affordable and accessible units for very low-income households. There was agreement to retain the second bullet regarding ADU units, unless the bullet under affordability also changes. It was decided to remove the third bullet because this was not specifically an IZ issue and would most likely be an issue for special permit consideration.
- ES presented the section on enhancing city oversight and data collection. She discussed the importance of ensuring that the affordable homes built through IZ need to be maintained over the long term, as owners are obligated to do. She said that IZ developers of smaller properties have less expertise and experience with managing the city's affordability requirements and that the first bullet refers to ensuring the city has an effective reporting and data collection system to ensure that affordability and accessibility requirements are complied with over the years. She said the second bullet recommends an idea that we have discussed at committee in the past regarding the establishment of a city-approved compliance and certification agency that developers/owners and their agents would be able to contract with to ensure ongoing compliance. She said this would not be mandatory but would be an option to be used by owners/developers. She discussed

other communities in the state that have experienced problems with losing affordable units that were produced through zoning ordinances, and that this has meant the loss of these affordable homes as long-term assets of those cities. She discussed the last bullet in this section describing the importance of having a systemized, annual data collection process. She discussed the recommendation of the committee's subcommittee on lotteries and lease-up for the city to provide data that could be used to evaluate fair housing issues to identify barriers to access for protected classes. JM said that she does not know whether the subcommittee has come up with a specific recommendation. She said that there is pushback for anything that will cost money. LK said that a number of owners/developers work with companies like SEB to carry out the compliance responsibilities. ES asked about smaller developers doing so and noted that a representative of SEB had encouraged the proposal. LK noted that there are few projects under 9 units that trigger IZ. They tend to give payments in lieu. She said that asking developers to put more money into the system is concerning because it is already expensive to develop affordable housing. She said that staff have been working hard over the last year to collect and organize the City's affordable housing data. She said that because it is an extremely hard and long process to develop in Newton, she would be reluctant to recommend additional costs placed on developers. She said that she is concerned that we are trying to fix problems that may or may not exist and would love to have our consultant look at this and reach out to developers themselves to ask these questions. It was agreed that all share the goal of ensuring the city has a long-term way to ensure affordability compliance and maintain the affordable housing stock to benefit low- and moderate-income households.

- ES said that SW, JF and she will work on making revisions and have that available for the next meeting. We will wait until our July meeting to finalize it.

3. Fair Housing for Policy Leaders Training

- ES said that the fair housing training for policy leaders is coming up June 18th at 4:00 pm and she hoped that people will attend. She discussed that ML is sending out the invitations. JM asked what is being done to encourage policy leaders, such as City Councilors, the ZBA, and Planning & Development, to attend the training. ES said that ML is circulating it to our mailing list which includes all city policy leaders, department heads, commissions and committees. Councilor PW suggested sending it to the city council president and asked if it will be recorded. ES said that it will be recorded and available on the city's website for about two months. Councilor JM recommended that it is good to have a pre-registration option so that the event can get on electronic calendars and the Zoom access can be added easily. ES said that the city has taken over the registration process and they do not offer this option at this time.

4. Discussion on Resident Experience Training

- ES said that we will have further discussion on this topic at our next meeting. She particularly wanted the committee to consider the recommendation that JF offered of the serious issues with some property managers and their treatment of people with disabilities seeking reasonable accommodation and who are affected by evictions.

5. Endorsement of Act to End Housing Discrimination (S.2566)

- ES presented the proposal regarding the endorsement of the Act to End Housing Discrimination. She thanked Hattie Kerwin Derrick for bringing it to her attention. ES reviewed aspects of the proposed law and the entities which have already endorsed it. JM said it is probably too late to be meaningful and said we should address recommendations

in a timelier manner. ES said that our only option is to deliberate in meetings and that those are monthly. SW made a motion to endorse the Act and JK seconded the motion, with all members agreeing to the endorsement.

6. Fair Housing Resource List

- This topic was postponed.

7. Fair Housing Project Reviews

- This topic was postponed.

8. Subcommittee Updates

- **Lottery Results & Lease-ups Sub-Committee**
- **Membership & Nominating Sub-Committee**
- **Fair Housing Award Sub-Committee**

- The award ceremony was well-attended including by the mayor, city councilor Albright, members of the committee and many members of the public.

9. Fair Housing Committee Priorities Discussion

FH Protected Groups

- **Promote housing choice for diverse populations to advance Affirmatively Furthering Fair Housing (AFFH), with focus on race/ethnicity, public subsidy, family status, and disability**
- **Promote Diversity, Equity, Inclusion and Belonging in Newton**
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Learning/Teaching

- **Enhance FH literature and website information and access for the public**
- **Promote FH training for real estate professionals, landlords, tenants, the public and committee members**

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- **Promote data collection on multi-family rental and new homeownership occupancy**
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Next meeting Wednesday, July 10, 2024

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DRAFT

TO: Lara Kritzer, Director of Housing & Community Development

FROM: Newton Fair Housing Committee

CC: Barney Heath, Director, Department of Planning & Development
Jen Caira, Deputy Director, Department of Planning & Development
Shaylyn Davis-Iannaco, Housing Program Manager
Malcolm Lucas, Housing Planner
Jini Fairley, ADA/504 Coordinator

RE: Fair Housing Committee Inclusionary Zoning 5-Year Review Recommendations

DATE: July 10, 2024

The Newton Fair Housing Committee (FHC) appreciates the opportunity to comment on priority areas that it recommends should be considered by the Department of Planning & Development, through its consultant, as part of the City's required five-year review of its Inclusionary Zoning (IZ) Ordinance.

The FHC's mission is to promote and support the City of Newton and its efforts to be a diverse and welcoming community with housing choices and opportunities free from housing discrimination. Acting in an advisory capacity to the mayor, the city council, and all applicable City departments, boards, and committees, the Committee aims to assure that policies and practices relating to fair housing are interwoven into the operations and activities of the City as well as the fabric of the community. As part of its mission, the Committee assists the City in meeting its duties to affirmatively further fair housing within Newton.

The IZ is a valuable way to promote new housing options that makes it possible for the city to be more welcoming of people of all backgrounds, including especially those that are traditionally underserved or experience discrimination: people of color, people with disabilities, families with children, seniors and other vulnerable and protected populations.

Newton has a shortage of housing of all kinds. This includes market rate, middle-income, affordable and deeply affordable rental and ownership homes. Using the IZ as a tool, Newton has chosen to promote the creation of market rate homes, as well as homes affordable to low- and moderate-income households to respond to the under-building and severe shortage of housing for lower- and middle-income households regionally, and acutely in Newton.

We recognize that the IZ is designed to be a market solution, created by the city to allow Newton to tap into the gains from rising real estate values to create affordable housing for low- and moderate-income people who otherwise could not remain in or move into the city. IZ effectively offers a private source of financing for affordable housing and leverages the

capability of the private sector to build homes. It is important to note that public resources for building affordable housing have significantly reduced over time and are insufficient to address the need, leading to the need to leverage more private resources such as the IZ offers.

IZ is an important tool for the city to affirmatively further fair housing and ensure that the city continues to thrive economically. It only works if the requirements placed on developers are financially feasible. If the ordinance results in slowing or preventing new housing because of infeasibility, then we would not recommend the inclusion of such requirements. We understand that Planning & Development will seek to balance financial feasibility with ways to promote the creation of new housing options for people of all income levels, including particularly at affordable levels.

Here are the priority recommendations of the FHC, contingent on a full analysis by the consultant of financial feasibility.

Affordability

--Explore ways to create more housing opportunities at 65% or less Area Median Income (AMI) with a goal of achieving 55% AMI on average—note that 65% AMI is the current average for affordable units in Newton;

--Consider reducing or increasing the minimum rental/for-sale unit threshold requirement from the current seven units to a lower or higher number, if feasibility analysis indicates. If the threshold is decreased below 7 units, create an option for developers to opt for the in-lieu payment by using the same approach as the current one for 7-9 units, e.g., for 6-units = 0.6 x Total Development Cost (TDC);

Accessibility

--Consider ways to increase development of affordable units that are more fully accessible (Group 2A-MAAB) and available to households at 50% AMI and 30% AMI, if feasible;

Enhance City Oversight and Data Collection

--Evaluate and recommend improvements to the City's oversight, reporting and data collection process for developers, owners, and owners' agents of IZ properties on their fair housing, affordability, and accessibility obligations;

--Evaluate whether owners/developers/owner agents of both small and large properties need additional training and assistance to ensure ongoing compliance with their IZ legal obligations.

Fair Housing in Newton: Guidance for Policy Leaders

Henry Korman

Of Counsel, Klein Hornig LLP

June 18, 2024



Why Consider Fair Housing in Municipal Practices?

Newton Human Rights Ordinance:

It is the policy of the city to see that each person regardless of race, color, religious creed, national origin, sex, age, disability, ancestry, or sexual orientation, or gender identity or expression, shall have equal opportunity in or access to employment, **housing**, education, and public accommodations; to assure that **each person shall have equal access to and benefit from all public services and licensing**; to protect each person in the enjoyment of his/her civil rights; and to encourage and bring about mutual understanding and respect among all persons in the city by the elimination of unlawful discrimination.

It is the policy of the city to follow all of the provisions set forth in M.G. L. Chapter 151B (the Massachusetts Anti-Discrimination Law) and 42 U.S.C. § 3601, et. seq. (the Federal Fair Housing Act, as amended) regarding non-discrimination in housing practices



Why Consider Fair Housing in Municipal Practices?

Required Notice of City's Statement on Fair Housing

The goal of this policy is to assure that Newton is an open, diverse, and welcoming community free from discrimination in any housing related activity, including but not limited to housing sales, leasing, and rentals; realtor and broker practices; housing development, construction, and management; advertising and listing practices; ***city housing planning, development, and zoning activities***; and home mortgage, lending and insurance practices.



Why Consider Fair Housing in Municipal Practices?

Legal Compliance Obligations:

- Fair Housing Act and the Massachusetts Anti-Discrimination Law (Chapter 151B)
- Americans with Disabilities Act
- Laws governing federal housing assistance provided to the City
- State Zoning, Permitting and Land Use Laws



Basic Concepts

Basic Concepts: Protected Groups

- *Race*
- *Color*
- *National Origin*
- *Religion*
- *Sex*
- *Families with Children under 18*
- *Sexual Orientation*
- *Gender Identity*
- *Marital Status*
- *Ancestry*
- *Disability (physical or mental)*
- *Age*
- *Military Status*
- *Genetic Information*
- *Recipients of public benefits (includes rental vouchers)*



Basic Concepts: What is Discrimination?

Types of Discrimination

- Disparate treatment: deliberate discrimination where a protected characteristic is a motivating factor in a decision
- Disparate impact: discriminatory effect, perpetuation of segregation



Basic Concepts: What is Discrimination?

- Denial, delay or exclusion in rental or sales
- Discriminatory advertising in rental or sales
- Restricting choice in rental or sales through segregation, steering, blockbusting, or other means
- Discrimination in real-estate related transactions; e.g., lending, secondary mortgage market, brokering, appraising, insurance
- Harassment; *quid pro quo* discrimination
- Inquiry about the existence, nature or severity of disability
- Non-compliance with architectural access standards; reasonable accommodations
- Most integrated setting for people with disabilities
- Failure or refusal to act affirmatively to reverse conditions of discrimination
- Failure to promote language access; disability and communication



Basic Concepts: Enforcement

- ***Fair Housing Act, Chapter 151B, the ADA and civil rights laws related to federal financial assistance:*** enforced by administrative complaints filed by individual complainants with state and federal agencies such as MCAD, the US Department of Housing and Urban Development and the US Justice Department or by judicial enforcement.
- ***Zoning and land use laws:*** commonly are enforced by state court litigation in the context of specific applications for zoning relief. State law requirements may also be enforced by the state Attorney General (e.g., Milton).
- ***Zoning disputes:*** may also be the subject of Fair Housing Act and ADA litigation brought by individuals or by the US Department of Justice.



City Functions that Affect Fair Housing



Architectural Access

- Inspectional Services enforces the state Building Code, including the accessibility requirements of the Massachusetts Architectural Access Board
- All City housing programs must comply with federal accessibility requirements of the ADA
- Federally funded City housing programs must comply with the federal accessibility requirements of Section 504, the Fair Housing Act and US Department of Housing and Urban Development



Fair Housing Planning

HUD Housing Funds (CDBG, ESG, HOME, Public Housing)

City must certify that it will ***affirmatively further fair housing*** by taking meaningful actions to address disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity and fostering and maintaining compliance with civil rights and fair housing laws. ***The duty extends to all of the City's activities and programs relating to housing***, not just the federal programs.

[See the Newton Home Consortium Analysis of Impediments to Fair Housing Choice](#)



Fair Housing Planning

ADA and Section 504

- The City must carry out a self-evaluation of policies, programs and services to identify barriers to participation by people with disabilities and take corrective actions
- City must designate one or more persons to coordinate compliance and decide appeals



Fair Housing Planning

Citizen Participation

- Consolidated Plan citizen participation plan, including AFFH
- AFFH right to comment to HUD; appeals
- Non-discrimination in appointment to planning boards and advisory committees
- Consultation with people with disabilities in ADA-Section 504 self-evaluations
- Notice of ADA-Section 504 rights



Funding and Related Actions

Ord. Section 22-7: Statement on Fair Housing Required in Notices of Public Hearings Relating to Permitting or Funding of Housing

(a) It is the policy of the City of Newton to see to it that each person shall have equal access to and equal opportunity in housing, regardless of race, color, religion, national origin, disability, age, sexual orientation, gender identity or expression, marital status, familial status..., public assistance (including rental vouchers), genetic information, or military status. Fair housing requirements apply to all types of housing, public and private, with very few limited exemptions, and regardless of whether government financial assistance is received



Funding and Related Actions

Ord. Section 22-7: Statement on Fair Housing Required in Notices of Public Hearings Relating to Permitting or Funding of Housing

(c) This Section applies to any public hearing or meeting concerning: (i) a petition for a development requiring a special permit which is proposed to include... an affordable housing “inclusionary unit”; (ii) a petition for a special permit to allow an association of persons to live in a congregate living facility... (iii) a petition for a comprehensive permit pursuant to M.G.L. Chapter 40B; and (iv) any request for public funding to subsidize the creation or preservation of affordable housing.



Funding and Related Actions

“Programs and activities relating to housing and urban development” must be administered in a manner ***affirmatively to further the policies” of fair housing:***

- Do not discriminate
- Monitor grantees (design and construction; marketing; admissions and occupancy)
- Consider the civil rights impact of funding decisions
- Take action to assure that open housing markets are created



Fair Housing, Zoning, Land Use and Permitting

Civil Rights-Related Standards in Chapter 40A – Dover Amendment

- Exception for religious uses
- No discrimination against disabled persons
- Equal treatment for congregate living serving people with disabilities
- Dimensional requirements do not apply to ramps for people with disabilities



Fair Housing, Zoning, Land Use and Permitting

Inclusionary Zoning in Newton

- Affordable unit dispersal
- Comparability standards for affordable units; size and amenities
- Maximum 25 percent local resident selection preference
- “Local resident” defined by Chapter 40B Guidelines
- Affirmative Fair Housing Marketing based on Chapter 40B Guidelines



Fair Housing, Zoning, Land Use and Permitting

Chapter 40B Guidelines

- Marketing to those least likely to apply, during entire affordability period
- Listing with MetroList and Housing Navigator (for rental), and MyMassHome (for homeownership) for affordability period
- Chapter 40B lottery procedures at initial occupancy
- “Local resident” defined by Chapter 40B Guidelines
- Language access procedures



Fair Housing, Zoning, Land Use and Permitting

Chapter 40B Guidelines

- “Local residents” are households that:
 - Currently live in Newton
 - Work in Newton, including municipal employees
 - Are hired to work in Newton
 - Have children attending Newton schools
- Working preferences must be extended to elderly and disabled households



Fair Housing, Zoning, Land Use and Permitting

Fair Housing Act, Chapter 151B and ADA

It is unlawful to enact or implement “land-use rules, ordinances, procedures, building codes, permitting rules, policies, or requirements that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.”



Fair Housing, Zoning, Land Use and Permitting

Fair Housing Act, ADA and Ch. 151B: Disparate Treatment

- Adverse decisions where a protected characteristic (race, disability, family status) is a “motivating factor”
- Protected groups may be the applicant *and* prospective occupants
- Includes situations where public opposition is animated by racial or other bias and a municipality acquiesces



Fair Housing, Zoning, Land Use and Permitting

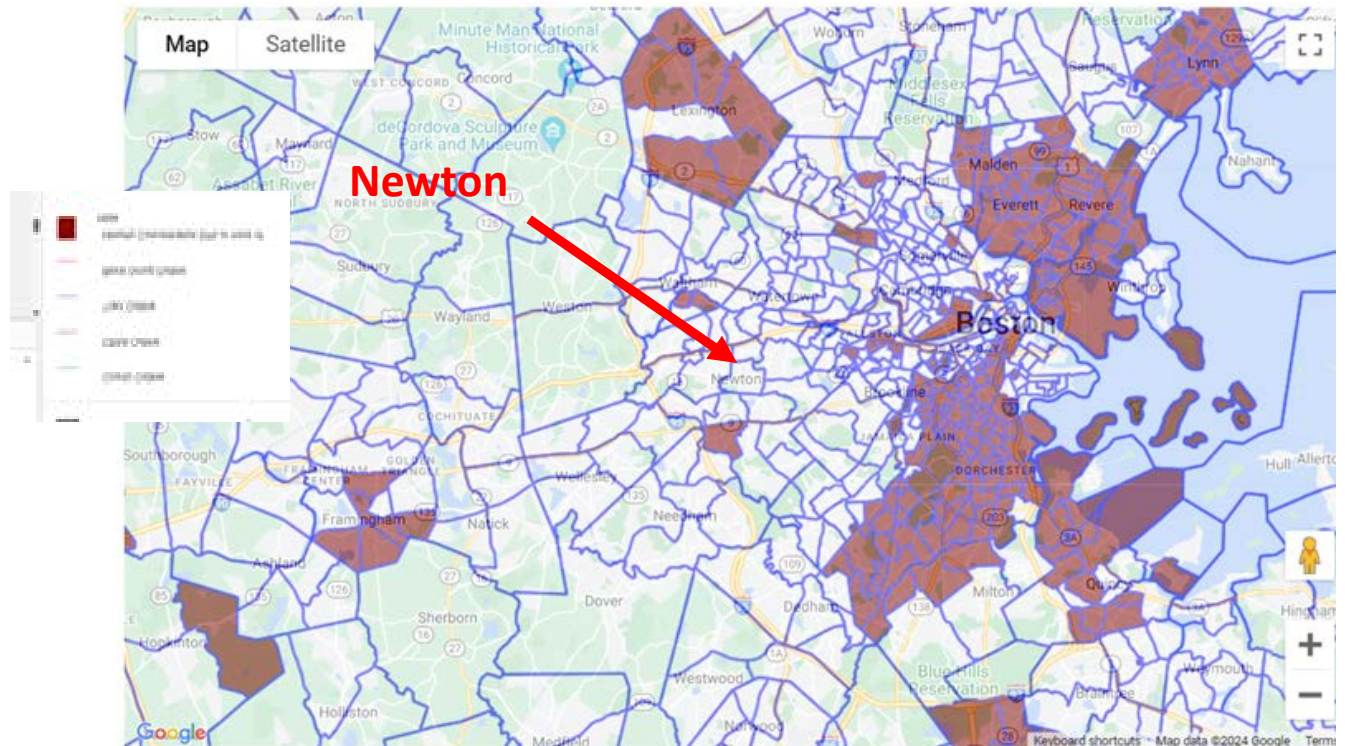
Fair Housing Act, ADA and Ch. 151B: Disparate Impact

- Neutral policies or procedures that have the *effect* of discrimination and are not justified by a “substantial, legitimate, nondiscriminatory” public or business interest; *or*
- Decisions that create, increase, reinforce, or perpetuate segregated housing patterns



Fair Housing, Zoning, Land Use and Permitting

Patterns of Minority Concentration



Fair Housing, Zoning, Land Use and Permitting

Newton Low-Moderate Income Housing Study 1968

Thus, while there is an increasing awareness of community housing needs expressed by a growing number of the City's residents, there are major disagreements as to the extent to which the provision of low and moderate income housing should be directed toward "outsiders."

Inherent in the controversy, but not often openly articulated, is the notion that to open a community's low income housing developments to other than local residents signals a major influx of black families fleeing the oppressive conditions of the core city ghettos. Those who would seek defeat of any low, or even moderate income housing proposal, have often used this device surreptitiously with great success. It has been applied with particular effectiveness in the modest residential neighborhood where the investment in one's home may be the only major family investment.

Fair Housing, Zoning, Land Use and Permitting

Fair Housing and ADA Reasonable Modifications in Zoning and Permitting Requirements for People with Disabilities

- At request of proponent, “reasonable” changes in rules, policies, practices and procedures may be required when needed to assure equal opportunity for people with disabilities
- A modification is reasonable if it does not result in an undue financial and administrative burden, or if it is not a fundamental alteration of a program.



Resources

Resources

- [Housing Choice Best Practices \(EOHLC\)](#)
- [Fair Housing Planning Toolkit \(HUD\)](#)
- [ADA and Section 504 Self-Evaluation and Transition Plan Guide \(EOHLC\)](#)
- [State and Local Land Use Laws and Practices and the Application of the Fair Housing Act \(Department of Justice\)](#)



Resources

Resources

- [City of Newton Fair Housing website](#)
- [Newton Fair Housing Committee website](#)
- [Newton Housing Needs Analysis and Strategic Recommendations \(2016\)](#)
- [Housing Navigator](#)
- [MyMassHome](#)
- [MetroList](#)



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Newton Fair Housing Committee—Resources As of 5/8/2024

Newton Fair Housing Committee Page:

<https://www.newtonma.gov/government/planning/boards-commissions/newton-fair-housing-committee/-fsiteid-1>

Newton Fair Housing Page: <https://www.newtonma.gov/government/planning/housing-community-development/housing/fair-housing>

Fair Housing Ordinance: city ordinance codifying Newton’s fair housing policy and requirement that all public notices relating to permitting of housing must inform residents about the City’s Fair Housing policy

<https://www.newtonma.gov/home/showpublisheddocument/67451/637521808366100000>

Newton Planning and Development Ordinance, Section, 22-7 Statement on Fair Housing Required in Notices of Public Hearings and Meetings Relating to Permitting or Funding of Housing:

<https://www.newtonma.gov/home/showpublisheddocument/29807/637867563487070000>

Newton Human Rights Ordinance:

<https://www.newtonma.gov/home/showpublisheddocument/29785/638328082928230000>

Page9-10. Sec. 12-50. Policy of the city.

(a) It is the policy of the city to see that each person regardless of race, color, religious creed, national origin, sex, age, disability, ancestry, sexual orientation, or gender identify or expression, shall have equal opportunity in or access to employment, housing, education, and public accommodations; to assure that each person shall have equal access to and benefit from all public services and licensing; to protect each person in the enjoyment of his/her civil rights; and to encourage and bring about mutual understanding and respect among all persons in the city by the elimination of unlawful discrimination.

(b) Policy of the city regarding housing practices:

(1) It is the policy of the city to follow all of the provisions set forth in M.G. L. Chapter 151B (the Massachusetts Anti-Discrimination Law) and 42 U.S.C. § 3601, et. seq. (the Federal Fair Housing Act, as § 12-51 NEWTON ORDINANCES — HEALTH AND HUMAN SERVICES § 12-53 Newton Ordinances On-Line - Chapter 12 - page 10 amended) regarding non-discrimination in housing practices.” (Rev. Ords. 1973, § 2-282; Ord. No. 55, 2-18-75; Ord. No. 79, 7-28-75; Ord. No. 248, 12-5-77; Ord. No. S-140, 12-16-85; Ord. No. X-175, 05- 26-05; Ord. No. X-201, 04-03-06; Ord. No. A-44, 09-15-14)

Facebook:

<https://www.facebook.com/profile.php?id=100064530946762&mibextid=LQQJ4d>

Newton Leads 2040: In 2016 the city created Newton Leads 2040 Housing Strategy, a Blueprint to Promote Affordable, Diverse Housing & Economic Growth, which recommended priority actions to expand housing choice in the city. A Housing Needs Analysis and Strategic Recommendations were prepared by RKG Associates, which continues to guide affordable housing and fair housing initiatives.

<https://www.newtonma.gov/home/showpublisheddocument/41602/637418380094000000>

Consolidated Plan and Consolidated Annual Performance and Evaluation Report (CAPER)

<https://www.newtonma.gov/home/showpublisheddocument/90058/637974569233081603>

AFFH is highlighted on the city's website and in all the Housing and Community Development Division's programs. The annual report provides details on how the Consortium's federal funding is used to further fair housing.

Newton, through its Housing & Community Development Department, under the Department of Planning & Development, is the primary entity in the City that works with consultants to collect and monitor information related to fair housing

<https://www.newtonma.gov/government/planning/housing-community-development> This information is driven first by HUD requirements related to federal funding and by the City's responsibilities leading the WestMetro HOME Consortium. Also, the Fair Housing Committee has been working to collect lottery and lease-up data from developers/owners of affordable housing to identify barriers to successful tenancies and affirmatively furthering fair housing, with the aim of improving results and overcoming barriers.

MetroWest HOME Consortium <https://www.newtonma.gov/government/planning/housing-community-development/westmetro-home-consortium> is led by Newton to affirmatively further fair housing in these 13 comparatively wealthier, largely white communities that are suburbs of Boston and whose land use and zoning policies have historically contributed to segregation in the greater Boston area. In addition to Newton, it includes Bedford, Belmont, Brookline, Concord, Framingham, Lexington, Natick, Needham, Sudbury, Waltham, Watertown, and Wayland. The Consortium is currently contracting with the Suffolk Law Housing Discrimination Testing Program to carry out matched pair testing on housing discrimination based on race and public subsidy vouchers.

Analysis of Impediments—With the WestMetro HOME Consortium, Newton led the Analysis of Impediments (AI) to Fair Housing Choice plan of 2021-2025. It carried out an extensive public engagement process and finalized the AI April 4, 2021

<https://www.newtonma.gov/home/showpublisheddocument/67974/637533290757270000>

Newton Community Needs Assessment 2/2022 for American Rescue Plan Act (ARP) investing in lower-resourced and traditionally marginalized populations particularly for finding or maintaining housing

<https://www.newtonma.gov/home/showpublisheddocument/81479/637817481785373331>

Current Affordable Housing Opportunities:

<https://www.newtonma.gov/government/planning/housing-community-development/housing/current-affordable-housing-opportunities>

Affordable Housing Resources:

<https://www.newtonma.gov/government/planning/housing-community-development/housing/homebuyer-assistance/affordable-housing-resources>

Homebuyer Assistance: <https://www.newtonma.gov/government/planning/housing-community-development/housing/homebuyer-assistance>

File a Fair Housing Complaint: <https://www.newtonma.gov/government/planning/housing-community-development/housing/fair-housing/file-a-fair-housing-complaint>

Architectural Accessibility: <https://www.newtonma.gov/government/planning/housing-community-development/architectural-accessibility>

Guidance on Fair Housing: <https://www.newtonma.gov/government/planning/housing-community-development/housing/fair-housing/homebuyers-renters>

Fair Housing Resource List: <https://www.newtonma.gov/government/planning/housing-community-development/housing/fair-housing/resources>

Fair Housing Month: <https://www.newtonma.gov/government/planning/housing-community-development/housing/fair-housing/reports-plans-policies>

Newton Diversity, Equity & Inclusion Policy:

<https://www.newtonma.gov/government/diversity-equity-and-inclusion>

The Newton Affordable Housing Trust

<https://www.newtonma.gov/government/planning/boards-commissions/newton-affordable-housing-trust> was established in 2021 to preserve existing affordable housing units and create new affordable units that are affordable to low- and moderate-income households, and to create a streamlined process to provide funding to new affordable housing projects.

The Newton Housing Partnership was created in 1989 to foster and support the preservation and creation of housing to promote an economically diverse city. It is responsible for reviewing housing projects and seeks to promote projects that will create housing that is affordable, accessible, and sustainable and that will support a diverse population in Newton over the long term

<https://www.newtonma.gov/home/showpublisheddocument/79811/637846849227970000>

The Newton Human Rights Commission <https://www.newtonma.gov/government/health-human-services/commissions/human-rights-commission#ad-image-1> was established in 1973

to ensure mutual understanding and respect among all persons in the City by promoting acceptance of diversity and combating discrimination. The HRC is responsible for the fair housing discrimination complaint process working with the Health and Human Services and Legal Departments.

The Newton Commission on Disability (COD)

<https://www.newtonma.gov/government/planning/boards-commissions/commission-on-disability> was established to foster equal access to community life and activities for people with disabilities. It is focused on the importance of increased accessibility, housing and facilities in municipal and commercial buildings, and other public places. It is responsible for the disability discrimination grievance procedure to meet the requirements of the Americans with Disabilities Act and Section 504 of the Federal Rehabilitation Act. COD is staffed by a full-time 504/ADA Coordinator who also staffs the Fair Housing Committee.

Newton Housing Authority <http://www.newtonhousing.org/> Most of the public housing, 298 units, is federally funded and is for the elderly/disabled. The wait list for these units is 3-5 years. The state-funded elderly/disabled program has a wait time of about 5 years. There are 79 family units that are scattered throughout the city, with 2-4 bedrooms units. The wait list is over 10 years for these. Newton also administers housing vouchers from HUD and the state. Some are for the homeless , and some are for survivors of domestic violence.

Community Preservation Program. Community Preservation Act funding for affordable housing allocated to Newton Affordable Housing Trust

<https://www.newtonma.gov/government/planning/community-preservation-program>

Homelessness Services: <https://www.newtonma.gov/government/planning/housing-community-development/homelessness>

Housing Eviction: <https://www.newtonma.gov/government/planning/housing-community-development/housing/housing-assistance-eviction-diversion/-fsiteid-1>

Housing Rehabilitation Program:

<https://www.newtonma.gov/government/planning/housing-community-development/westmetro-home-consortium/housing-rehabilitation-program>

Human Services Programs: <https://www.newtonma.gov/government/planning/housing-community-development/human-services>

Social Services: <https://www.newtonma.gov/government/health-human-services/social-services>

Overdue: Confronting Race & Racism: <https://www.newtonma.gov/government/mayor-fuller/special-projects-and-initiatives/overdue-confronting-race-racism-in-newton/-fsiteid-1#!/>

LGBTQ+ Resources: <https://www.newtonma.gov/government/mayor-fuller/special-projects-and-initiatives/lgtbq-resources>

High Interest Projects—Housing Developments:

<https://www.newtonma.gov/government/planning/development-review/high-interest-projects>

Amy Dain, independent consultant on public policy who focuses on urban and suburban planning and an expert on zoning in Massachusetts: exclusionary-by-design study:

<https://www.bostonindicators.org/reports/report-detail-pages/exclusionary-by-design>

Zoning redesign <https://www.newtonma.gov/government/planning/plans-policies-strategies/zoning-redesign> — AFFH has been integral to the process of zoning redesign and more recently planned implementation of MBTA Communities Act zoning. The most recent zoning redesign passed City Council in December 2023 and is designed to address MBTA Communities Act requirements as well as encourage more as-of-right housing, greater density in multifamily housing development including inclusionary zoning requirements that increase when more units are affordable. This will create new housing opportunities to promote more affordable housing, although it was substantially reduced and limited by final City Council vote.

Newton’s inclusionary zoning requirements, updated in 2019, for 7 or more units or payment to City to build affordable housing units, is beginning to result in more affordable housing options and more units are on the way. Requirements for 7-20 units: 15%; for 21-99 units: 17.5%; and for 100+ units: 20%. New 5-year review initiated in 2024.

<https://www.newtonma.gov/home/showpublisheddocument/87296/637937324849270000>

MBTA Communities Law: <https://www.newtonma.gov/government/planning/plans-policies-strategies/multi-family-zoning-requirement-for-mbta-communities>

Accessory Apartments: <https://www.newtonma.gov/government/planning/development-review/accessory-apartments> Implemented an accessory apartment ordinance allowing some development of smaller and more affordable units.

Newton reduced local preference requirements in affordable housing lotteries from state allowed 70% to 25%. A study commissioned by the city showed that there were significantly fewer people of color and people with disability who were successful in affordable housing lotteries than there were applicants.

Newton’s Stability/Mobility Initiative <https://www.newtonma.gov/government/health-human-services/social-services/community-needs-assessment> in partnership with

EMPath, a nonprofit organization with a mission of moving people out of poverty, is designed to use ARPA funds to support fifty low-income Newton families with children with intensive one-to-one economic mobility coaching over two years. The emphasis is on people of color who were disproportionately harmed by the pandemic and those who are homeless or at-risk of homelessness, living in subsidized housing, or who are otherwise struggling. The focus is on family stability, well-being, education and training, financial management and employment and career management. After the two years, participants will continue to work with EMPATH and will also receive monthly cash incentive for active participation.

State and Federal

My Mass Home. Newton posts available affordable homeownership opportunities on this site

https://www.mymasshome.org/?gad_source=1&gclid=Cj0KCCQjw2a6wBhCVARIsABPeH1v9bflatC-ndcukXzR0HLHRdo02XdOOCFaXkvfLT20UcNxyF-djRREaAjiUEALw_wcB

Housing Navigator. Newton and the Newton Housing Authority post available affordable rental opportunities on this site

https://search.housingnavigatorma.org/navigator?hasLottery=true&loc=Massachusetts&locType=all&page=1&seed=602&hasFcfs=true&gad_source=1&gclid=Cj0KCCQjw2a6wBhCVARIsABPeH1uNp4t_MV3ulAS2zZzLwP7-Kimhdy9bxRc_736iDzCuzcvzPkNKjlkaAp10EALw_wcB

Metrolist Boston. Newton posts available income-restricted rental and ownership housing: <https://www.boston.gov/metrolist>

Housing Choice Best Practices (EOHLC): <https://www.mass.gov/doc/2023-housing-choice-best-practices/download>

Fair Housing Planning Toolkit (HUD):

https://www.hud.gov/program_offices/fair_housing_equal_opp/fhp_toolkit

ADA and Section 504 Self-Evaluation and Transition Plan Guide (EOHLC):

<https://www.mass.gov/files/documents/2016/07/wj/ada-504.pdf>

State and Local Land Use Laws and Practices and the Application of the Fair Housing Act (Department of Justice): <https://www.justice.gov/opa/file/912366/dl>