



Ruthanne Fuller  
Mayor

Barney Heath,  
Director, Planning &  
Development

Malcolm Lucas  
Housing Planner

**Members**

Esther Schlorholtz, Chair  
Donna Rigg, Vice Chair  
Beatrice Flores  
Judy Korzenowski  
Josephine McNeil  
Tatjana Meschede  
Steve West

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# CITY OF NEWTON, MASSACHUSETTS

## Fair Housing Committee

### AGENDA

**Meeting Date:** November 6, 2024  
**Location:** Zoom  
**Time:** 8:30 a.m.

This meeting will be a virtual meeting that will take place via Zoom. To view and participate . <https://newtonma-gov.zoom.us/j/89401080601> or dial 1-646-931-3860

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

1. Approval of October 2024 minutes
2. Consolidated Plan 2026-2030
3. Fair Housing Training
4. MBTA Communities Act
5. 40B Project Update
6. Subcommittee Updates
  - Lottery Results & Lease-ups Sub-Committee
  - Membership & Nominating Sub-Committee
  - Fair Housing Award Sub-Committee
7. 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**

## **8. Adjournment**

The location of this meeting is wheelchair accessible and reasonable accommodations will be provided to persons with disabilities requiring assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA/Sec.504 Coordinator, Jini Fairley, at least two business days in advance of the meeting: [jfairley@newtonma.gov](mailto:jfairley@newtonma.gov) or (617) 796-1253. For Telecommunications Relay Service, please dial 711 or call City Hall's TTY/TDD line at 617-796-1089.



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## CITY OF NEWTON, MASSACHUSETTS

### Fair Housing Committee

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## MEETING MINUTES

Date: October 2, 2024

Time: 8:30 a.m.

Place: Virtual (Zoom)

**Members Present:** Esther Schlorholtz, Chair

Donna Rigg, Vice Chair

Judy Korzenowski

Josephine McNeil

Tatjana Meschede

Steve West

Beatrice Flores

**Members Absent:**

**Staff Present:**

Malcolm Lucas, Housing Planner

Jini Fairley, ADA/Sec. 504 Coordinator

Lara Kritzer, Director of Housing and Community  
Development

Allison McIntyre, Housing Development Planner

**Public Present:**

Pam Wright, Council

Andreae Downs, Council

Mignonne

Malcolm Lucas, Housing Planner served as recorder, Esther Schlorholtz, Chair, called the meeting to order at 8:30 a.m.

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

### 1. Approval of September 2024 minutes

- Upon a motion by TM, SW seconded the motion. The September 2024 minutes were approved 6-1-0, with one abstention.



## 2. Fair Housing Training Plans

- ES thanked AM for providing information about an upcoming fair housing training for property managers in October 9, 2024. Regional Housing Services Opportunities is hosting the training, and the presenters are Suffolk Law. ES stated that she and BF will attend and hoped that the other members would attend. The time will be during the day. ES stated that in addition the FHC is planning to host a training for real estate professionals. ES stated that she will work with JK to plan for January/February 2025. ES asked if there were any questions, there were no questions or comments.

## 3. Housing Navigator Massachusetts

- ES introduced AM to the committee and AM began the presentation with explaining to the committee of her work with the Housing Navigator staff. AM stated that she wanted to make sure that the Planning Department and the Fair Housing Committee stay coordinated on the efforts, knowing the FHC has also been working with the Housing Navigator and they are not separately working on the same work which would be counterproductive. AM stated that she would like to support the FHC in their efforts and what is acceptable with her supervisor and when she has the availability.
- AM began to state what the Housing Navigator is and walked through the website's capabilities and gave an example of what a person who was searching for affordable housing steps. AM explained that this tool maps out affordable housing occupancy, lotteries and waitlist throughout the state and it also provides resources and data reports if needed. She stated that the website has a wealth of information and if there is a piece of information that is not available or visible in the platform a person is directed to contact the Housing Navigator directly.
- AM also shared with the FHC that the Housing Navigator staff collects data and uploads everything by hand and stated that she has a spreadsheet that she created to gather data from property owners that helped her to communicate with the Housing Navigator staff what is available in Newton. AM stated she also wanted to focus making sure that the accessibility and adaptability information is available for Newton properties on their platform. AM stated she can also find this information in documents that is associated with funding agreements and leases.
- AM posed a question to the FHC on why a property would not appear on the Housing Navigator website. ES stated congregate housing and housing that is reserved for special populations that is being served for security issues. JM stated that the program is voluntary so people who do not want to put their property on the Housing Navigator does not have to. AM agreed with both answers.
- ES asked if the subsidized housing inventory is required through EOHL. ES stated it is a requirement because the process of 40B and these projects are also required to pay a fee. AM stated that it may be a requirement but thinks that it would be automatic because the SHI units are affordable. AM stated that she would look into this, but she wanted more clarification and asked what the reason for would be having this information for someone who is looking for affordable housing on this platform. ES stated in the presentation the Housing Navigator gave the staff person stated that they were meeting with the NHA and the City of Newton in talking about creating a partnership and setting up a formal process for reporting updates. ES thought that there was not a formal process. LK stated that Newton is a part of the Housing Navigator and Googled it and shared the information on the page with the FHC. LK stated that there is a relationship, and the Housing Navigator has a

very complete assessment with Newton's properties. She also stated that the updating/reporting is largely the responsibility of the property management companies. ES stated that this is great to hear. ES thanked AM and stated that she is looking forward to hearing the designated affordable unit are required by the state to report to the Housing Navigator.

#### **4. IZ Update**

- ES gave a brief updated and thanked LK for putting her in touch with the consultants who have been working on the five-year reporting requirement that the city has to ensure the zoning program is functioning properly. ES stated that it was a very good discussion and stated that it was a follow up discussion from the recommendations that were made by the committee. The three priority categories that were focused on was affordability, accessibility and enhancing the city oversight and data collection of IZ units. Discussion also was about the affordability and accessibility issues that are affected by financial feasibility.
- ES stated that RKG is very knowledgeable and feels that they have a thorough review. ES asked when the report was due. LK stated that she believes the process was six months and estimated that they will come back in the new year to check in and to report back. LK stated that there are a few more steps in this process. LK stated that the findings need to be presented to the Zoning and Planning Committee and the Housing Partnership, so timing is not a set time because it depends on agendas that is why there is some flexibility. LK invited to the Housing Partnership when it is ready to be presented. Right now, they are still doing interviews with stakeholders and people who had done development. City Council and developers are meeting with the consultants as well. Planning is trying to get as many voices as possible.

#### **5. Housing Priorities Task Force Update**

- ES gave an update about the task force. The task force focuses on, an affordable housing need in Newton and the region. It includes representation by the Affordable Housing Trust, the Newton Housing Partnership, and the Fair Housing Committee. ES stated that this is very valuable and stated that LK has been deeply involved and spoke about the analysis that the group came up with which was instructive, related to rental and ownership housing. The total inventory and qualifying reported is a little over 4000, half of that coming from the comprehensive permit and another 1500 from the special permit but only 63 by right.
- This includes the SHI and affordable units that have deed restrictions. There are around 311 homeownership qualifying units. After ES brief review she asked if TM or JM had any comments. TM thanked ES and stated that she gave a great summary and stated that the task force is definitely a work in progress, and it takes longer that they would have thought. TM stated that it was really challenging to figure out what are good comparisons within in the region. Cities like Newton are wealthier. TM did state that they have ran into data challenges to get demographic information. She stated that there is a huge segregation pattern of housing in the greater metropolitan area and that the group wants to stay away from steering people with certain income levels of the protected groups into the areas where they live. TM stated that she thinks the policy recommendation is important, but data is also a important piece. JM stated that here view was that the group has not discussed priorities and still needs some refinement and asked LK for clarification. LK stated that planning staff has worked diligently on this, and they are still fine tuning some things and most of the data has been collected at this point. LK did agree that the priority discussion has not been discussed and is hoping this will be the next step. JM stated that she and TM have been working together and suggested that data should also be collected from

market rate renters and low-income renters to help define our priorities based upon the need and from a fair housing perspective. This is also a task that they have been working on as well.

- JF stated that she also attended the group, and she was also interviewed regarding the assessable apartment availability in Newton. JF stated that she was working on and looking into because she did not have exact numbers. ES encouraged JF to attend the task force meetings because she has great knowledge and information.

## **6. Subcommittee Updates**

- **Lottery Results & Lease-ups Sub-Committee**
  - There are not any updates at this time.
- **Membership & Nominating Sub-Committee**
  - ES asked DR if there were any updates. DR stated that there were not any updates at this time.
- **Fair Housing Award Sub-Committee**
  - ES stated that there were not any updates at this time. ES stated that they will not start this process until the New Year and asked members to think about nominations.

## **7. 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**

### **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**
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**Next meeting: Wednesday, November 6, 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](mailto: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

# Fair Housing For Housing Providers

Presented by Suffolk Housing Discrimination Testing Program



# Agenda

- I. General fair housing information
- II. Prohibited Conduct
- III. Housing Discrimination
  - I. Vouchers
  - II. Lead Paint
  - III. Disability
- IV. Tips and Resources for Housing Providers

# Not Legal Advice

Nothing communicated during this fair housing training should be considered legal advice. If you have legal questions, you should consult with your own attorney.

# 1968 Fair Housing Act & 151B Section 4

The Fair Housing Act prohibits discrimination by housing providers (e.g., landlords, real estate companies, banks) due to a person's membership in a protected class.

Massachusetts' Anti-Discrimination Law provided additional protections.

# Protected Classes

Federal (and Massachusetts)	Massachusetts only
Race	that whole list, +
Color	Marital Status
National Origin	Age
Religion	Sexual Orientation
Sex (includes Sexual Orientation, Gender Identity and Expression, & Sexual Harassment)	Gender Identity & Expression
Familial Status (e.g. Families with Minor Children, Guardians, Pregnant People)	Military or Veteran Status
Disability	Ancestry
	Genetic Information
	Public Assistance

# Prohibited Conduct as Housing Providers

- ▶ Refuse to rent a property or otherwise make unavailable.
  - ▶ E.g. A property manager saying a property is “no longer available for rent” after hearing that an applicant has a child under the age of six, but keeping the rental listing posted for other applicants.
- ▶ Set different terms, conditions or privileges for sale or rental.
- ▶ “Steer” the individual by only showing them certain apartments/neighborhoods.
- ▶ Refuse to grant a reasonable accommodation or modification to someone with a disability.

# Prohibited Conduct continued

- ▶ Make inquiries into a protected category.
  - ▶ What country are you from? What is your disability?
- ▶ To make, print, or publish any statement that indicates a preference or limitation based on a protected class.
  - ▶ “No vouchers” or “No families with kids under 6”
- ▶ Coerce, intimidate, threaten, or interfere with anyone exercising a fair housing right or assisting others who exercise those rights.

# What is Housing Discrimination?

- ▶ Illegal discrimination occurs when someone providing housing engaged in prohibited conduct due to a person's membership within a protected class.
- ▶ Protected Class + Prohibited Conduct = Illegal Discrimination

# Examples of Voucher Discrimination

- ▶ Refusal to rent to someone because they receive Section 8 housing assistance.
  - ▶ Ex: “Sorry, this isn’t a Section 8 unit”
- ▶ Refusal to rent to someone because a person receives some form of public assistance, including welfare, medical assistance, or rental assistance.
  - ▶ Ex: Prop Manager refuses to take RAFT to pay for the first month’s rent.
  - ▶ Ex: Prop Manager refuses to consider SSDI as "income."
- ▶ Discriminating against a person because of the requirements of subsidy programs.
  - ▶ Ex: Prop manager says, “Section 8 takes too long; I’ll lose rent if I leave the unit vacant for the time it takes to get inspected.”
- ▶ Using policies to exclude voucher holders
  - ▶ Ex. Requiring that income is 3x or 4x rent



# Statements that Constitute Discrimination

- ▶ “The apartment wouldn’t pass inspection.”
- ▶ “Sorry, we can’t take vouchers at this time.”
- ▶ “It isn’t a voucher-approved unit.”
- ▶ “We don’t like to work with that housing authority.”
- ▶ "Sorry, there's no lead certificate."
- ▶ “I’ll look for other apartments where you can use a voucher.”

# Lead Paint Discrimination

- ▶ It is illegal to refuse to rent to a family with a child under the age of 6, even if there is lead paint present in the rental unit.
- ▶ The Massachusetts Lead Paint Law:
  - ▶ requires the removal/covering of lead paint hazards in homes built before 1978 where children under the age of six live.
  - ▶ Start of tenancy may be delayed up to 30 days during the lead abatement process.
  - ▶ Current tenants must be housed elsewhere at LL's expense during the lead abatement process (but still be paying rent).
  - ▶ The landlord bears the cost of removal/covering of lead paint hazards.
- ▶ There are *no* exceptions to these requirements.

# Disability Discrimination

- ▶ Disability: a physical or mental impairment that substantially limits one or more major life activities
  - ▶ For example: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working
- ▶ Individuals regarded as having such an impairment
- ▶ Individuals with a record of such an impairment

# Accommodation Examples

- ▶ Accessible parking space
- ▶ Exception to a “no pets” policy
- ▶ Waiver of guest fees/rules for home health aides
- ▶ Provision of alternative forms of communications (verbal vs written)

# Modification Examples

- ▶ Installing a ramp
- ▶ Widening doorways
- ▶ Installation of grab bars
- ▶ Visual fire alarms
- ▶ Lowering counters

# What if the disability is not noticeable?

- ▶ A housing provider cannot ordinarily ask about the nature and severity of a person's disability.

In response to a RA, a provider may request reliable disability-related information that:

- ▶ Is necessary to verify that the person meets the Act's definition of disability (sub. limitation of major life activity);
- ▶ Describes the needed accommodation; and
- ▶ Shows the relationship between the request and the person's disability (if not readily apparent)

Verifying information can be provided by doctor, other medical professional, peer support group, non-medical service agency, proof of receipt of SSDI or SSI in some cases, or a person who is in a position to know about the individual's disability.

# Medical Records Relating to Disability

- ▶ In most cases medical records or detailed information about the nature or severity of a person's disability is not necessary!
- ▶ Property should only seek information necessary to evaluate if RA is needed.
- ▶ **The tenant's information must be kept confidential** and must not be shared with other people unless they need the information to grant or deny the request (or if disclosure is required by law).

# Reasonable Accommodations

- ▶ **Reasonable Accommodations (RA)** are changes in rules, policies, practices, or services to give equal opportunity to housing.
- ▶ Housing providers (LHAs, RAAs, real estate agents, landlords) must engage in an interactive process when an individual with a disability makes a request
  - ▶ Ex (from landlord): designated parking spots, permission to have an assistance animal, or permission to transfer to a larger unit
  - ▶ Ex (from LHAs/RAAs): increase in voucher size, increased payment standard, extension of housing search time.
- ▶ Reasonable accommodations are made at the expense of the housing provider.

# Example of A Common RA Request

- ▶ Tenant asks for an accommodation for their service animal/emotional support animal (in this case, a dog)
  - ▶ Cannot deny the request simply because of the breed/size of the dog
  - ▶ Cannot require a pet fee deposit
  - ▶ Landlord can request documentation **when the disability is not obvious**
- ▶ Work to come to a resolution that works for both the landlord and tenant
  - ▶ Be careful with overly restricting where the animal can/cannot go, what the animal can/cannot do, etc.



# Assistance Animals are NOT Pets!

## Service Animals

- ↳ Covered by both Fair Housing Act and ADA
- ↳ Dog that is *individually trained* to do work or perform tasks for individual with a disability.
- ↳ Allowed in private housing AND public spaces.

## Support Animals

- ↳ Covered by the Fair Housing Act
- ↳ Animal that perform tasks, provides assistance or *therapeutic emotional support* for individual with disability.
- ↳ Allowed in private housing.
- ↳ DOES NOT have to be specially trained.

# Reasonable Modifications

- ▶ **Reasonable Modifications** are structural changes needed by a person with a disability to existing premises.
  - ▶ i.e. install a ramp into a building, lower entry threshold of a unit, install grab bars in bathroom
- ▶ Paying for Reasonable Modifications:
  - ▶ **Federal Funding:** Housing providers receiving federal funding must pay for reasonable modifications unless it would cause an undue financial hardship.
  - ▶ **No Federal Funding:**
  - ▶ Tenant pays unless landlord did not comply with required accessibility features.
    - ▶ In MA, if unit is part of 10+ unit property/planned development or is publicly assisted, Landlord must pay unless it would cause an undue financial hardship.

# Reasonable Accommodations & Modifications

- ▶ Requestor doesn't need to specifically use the words "reasonable accommodation" or "modification" to start this process
- ▶ May use a form, but cannot require the use of specific forms for an RA/RM
- ▶ Disability documentation is not required for a disability that is readily apparent or already known
- ▶ Accommodations and modifications can be requested at any time
- ▶ All information provided as part of RA/RM request must remain confidential
- ▶ No response or prolonged delay is effectively denial - reach out for help from an attorney if you need it

# When can a RA/RM request be denied?

- ▶ If the request was not made by or on behalf of a person with a disability
- ▶ If there is no disability-related need for the accommodation
- ▶ If it is not reasonable - would impose an undue financial AND administrative burden on the HP
- ▶ If it would fundamentally alter the nature of the provider's operations
  
- ▶ Denial determinations must be made on a case-by-case basis
  - ▶ Cost of accommodation
  - ▶ Financial resources of the HP
  - ▶ Benefits the accommodation would provide the requestor
  - ▶ Availability of alternative accommodations that would meet need
  
- ▶ Ignoring a RA/RM request OR an unreasonable delay in responding to the request is considered a **DENIAL** of the request.

# Can a housing provider charge a tenant a fee for the RA request?

- ▶ **No!** A HP cannot require people with disabilities to pay extra fees or costs (deposits) as a condition of receiving the RA.

Examples of unlawful fees due to an RA:

- ▶ Cannot require additional "pet insurance" for an assistance animal
- ▶ Cannot require an extra security deposit because a walker/wheelchair may damage the flooring.

# Is a housing provider obligated to provide an RA if not requested?

- ▶ No. Only if a resident or applicant has made a request.
- ▶ *When has a request been made?*
- ▶ A HP has notice that a RA has been made if a person, their family member, or someone acting on their behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability.
- ▶ The words “reasonable accommodation” do not have to be used!

# Substance Use Disorders

A mental disorder that affects a person's brain and behavior, leading to their inability to control their use of substances, such as legal or illegal drugs or alcohol.

- ▶ People CURRENTLY engaged in the use of illegal substances are NOT protected.
- ▶ However, substance use disorder IS a protected disability under the Fair Housing Act
  - ▶ This includes people with SUD who have successfully completed a drug rehabilitation program or otherwise stopped using illegal substances AND
  - ▶ Individuals who are currently in a drug rehabilitation and no longer using illegal substances.

# Direct Threat?

A person may not be protected by the fair housing laws if their tenancy would constitute a “direct threat” to the health or safety of other individuals or result in substantial physical damage to the property unless the threat can be eliminated or significantly reduced by a reasonable accommodation (RA).

- ▶ Exclusion of people based on fear, speculation, or stereotype about a particular disability or people with disabilities in general is not allowed.
- ▶ Determination must rely on an **individualized assessment** that is based on **reliable objective evidence**.



The Reasonable Accommodation/Modification process is  
a HIGHLY INDIVIDUALIZED process

Each request will be unique and should be dealt with as  
such - considerations of how other voucher holders or  
tenants have been treated should not be part of the  
analysis.

# Tips for Housing Providers

- Establish a checklist and team plan.
- Use template emails or other correspondence.
- Background and credit checks OK – as long as EVERY APPLICANT is asked for the same information
- Maintain a call log for every property.
- Be prepared to communicate about relevant laws.
- Slow down. Engage in self-reflection.
  - Self-assessment - Project Implicit, take implicit association tests at (<https://implicit.harvard.edu/implicit/>)

# Want to learn more?

- ↵ Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (1st. Ed. 2017)
- ↵ James W. Loewen, *Sundown Towns: A Hidden Dimension of American Racism* (Touchstone 1st ed. 2006)
- ↵ *Segregated by Design*, available at <https://www.segregatedbydesign.com/> (length - 17 min. 42 sec.)
- ↵ *This American Life: 512: House Rules*, Nov. 22, 2013, available at <https://www.thisamericanlife.org/512/house-rules> (55 min. 34 sec.)

# Agencies that can provide more information

## U.S. Dept. of Housing and Urban Development

Phone: 202-708-1112

Visit: [HUD.gov](http://HUD.gov) / U.S. Department of Housing and Urban Development (HUD)

## Housing Discrimination Testing Program (HDTP):

Phone: 617-884-7568

Visit: [suffolk.edu/law/academics-clinics/clinics-experiential-opportunities/housing-discrimination-testing-program](http://suffolk.edu/law/academics-clinics/clinics-experiential-opportunities/housing-discrimination-testing-program)

## Massachusetts Fair Housing Center (MFHC):

Phone: 413-539-9796

Email: [info@massfairhousing.org](mailto:info@massfairhousing.org)

Visit: [massfairhousing.org](http://massfairhousing.org)

## SouthCoast Fair Housing (SCFH):

Phone: 774-473-9994

Visit: [southcoastfairhousing.org](http://southcoastfairhousing.org)



Commonwealth of Massachusetts  
EXECUTIVE OFFICE OF HOUSING &  
LIVABLE COMMUNITIES

Maura T. Healey, Governor ♦ Kimberley Driscoll, Lieutenant Governor ♦ Edward M. Augustus Jr., Secretary

Via Email: [fuller@newtonma.gov](mailto:fuller@newtonma.gov)

October 10, 2024

Mayor Ruthanne Fuller  
City of Newton  
1000 Commonwealth Avenue  
Newton MA 02459

**Re: Newton – Conditional District Compliance Determination for MBTA Communities under Section 3A of the Zoning Act (Section 3A)**

Honorable Mayor Fuller:

Congratulations! The Executive Office of Housing and Livable Communities (EOHLC) has reviewed the district compliance application for the City of Newton, which is comprised of three districts Multi Residence Transit (MRT), Village Center 3 (VC3) and Village Center 2 (VC2) (District). After careful review and analysis, EOHLC has determined that Newton is **CONDITIONALLY compliant** with Section 3A. EOHLC recognizes the diligent work by the City of Newton to meet the requirements of the MBTA Communities Law. There are a few areas of the City's zoning that require refinement in order to meet the "as of right" requirements of the law.

Please note that this determination of conditional compliance by EOHLC does NOT qualify Newton for the MBTA Communities Catalyst Fund which was announced by Governor Healey in June. When the City has a determination of compliance without conditions, it will qualify for this new capital funding program. You can learn more about the program at the web page [MBTA Communities Catalyst Fund](#) which has a link to the Notice of Funding Availability (NOFA). While housing production is not required, EOHLC is eager to hear about multi-family developments in your MBTA Communities District, please share permit activity with us at [EOHLC3A@mass.gov](mailto:EOHLC3A@mass.gov).

Newton is designated as a Rapid Transit Community with 33,320 existing housing units per the 2020 United States Decennial Census. The City is required to have a district with a minimum land area of 50 acres, and a minimum multi-family unit capacity of 8,330 units.

EOHLC conducted a thorough review of the application, and makes the following **preliminary** determinations:

1. The District comprises **223 acres**.
2. As of right multi-family unit capacity for the District is estimated at **8,399 units**.

3. The gross density of the District is estimated at **37.7 dwelling units per acre**.
4. At least **fifty percent (50%)** of the District is one contiguous land area.
5. **At least ninety percent (90%)** of the required District land area and estimated unit capacity is within transit station areas.
6. For projects 7 units and over, the District contains an Inclusionary Zoning requirement as follows: 7 to 20 units = 15%, 21-99 units = 17.5%, and 100+ units = 20% must be deed restricted affordable to households at or below 80% of Area Median Income (AMI) for ownership projects and an average of 65% of AMI for rental projects. EOHLC finds the Economic Feasibility Analysis provided by the City supports the feasibility of multi-family development.
7. The City's zoning contains some special permit requirements that prevent "as of right" development of multi-family housing. Please see below for details on this finding.
8. The multi-family housing allowed in the District is suitable for families with children pursuant to Section 3A and Section 7 of the Guidelines.
9. There are no dimensional zoning requirements not captured by the compliance model that will clearly reduce the District's estimated multi-family unit capacity below its requirement. Please see below for details on this comment.
10. Taken as a whole, the geography of the District meets the land area, multi-family unit capacity, gross density, and contiguity requirements of Section 3A and the Guidelines.

The following table shows the **required** District minimums, the estimates **submitted** in the District application, and estimates as **determined** by EOHLC following its review:

	<b>Required</b>	<b>Submitted</b>	<b>Preliminarily Determined</b>
Land area (acres)	50	223	223
Multi-family unit capacity (units)	8,330	8,532	8,399
Gross density (units per acre)	15	38.3	37.7
One 50% contiguous area	Yes	Yes	Yes

EOHLC identified the following **discrepancies from the submitted area, unit capacity and density metrics**:

- Unit capacity: The VC3 district set forth lower height limits for buildings within 50' of a "residential district". EOHLC estimates that this additional dimensional restriction removes 133 units of capacity from the District.
- Gross density: Accounting for the loss of unit capacity in connection with the above reduces the estimated gross density to 37.7 units per acre.

EOHLC identified the following provisions in the Zoning Ordinance that **do not allow for multi-family as of right** in accordance with MGL c. 40A Section 3A and the MBTA Communities

Guidelines. These two items require action by the City Council to make revisions to the zoning ordinance.

1. Section 9.1.1.A.2 requires an “opt in” process where all lawful pre-existing uses and structures existing at time of site opt-in are deemed nonconforming, regardless of whether they actually meet requirements of the overlay district. This subjects projects to Section 7.8 and could trigger special permit requirements for multifamily housing.
2. Section 9.2.6.A.7 requires a special permit for any retaining wall over 4 feet high. This requirement could require a special permit for many development proposals, as retaining walls are often part of routine site work for multi-family housing. This requirement must be removed in order for the zoning to allow multi-family housing as of right.

EOHLC identified the following **additional factors** that could affect as of right multi-family housing development in the District:

- We caution the City that it must apply the requirement for prohibited uses to
- cease before a site may not opt in to the VCOD in a manner that will allow property owners to maintain those uses during the permitting process for proposed multi-family housing.
- The MRT district has a maximum building footprint of only 1500 square feet and requires a special permit for multiple buildings per lot. These dimensional limitations are not reflected in the Compliance Model submitted by the City. EOHLC recognizes the additional permissiveness of adaptive reuse in the MRT and will not require the City to revise this area of its zoning. However, we encourage the City to consider increasing the maximum building footprint for new development and eliminating the special permit trigger for multiple buildings per lot in the MRT, and will monitor whether the current requirements prevent the development of multi-family housing as of right in the MRT.

Please note that continued district compliance is **subject to** the following requirements:

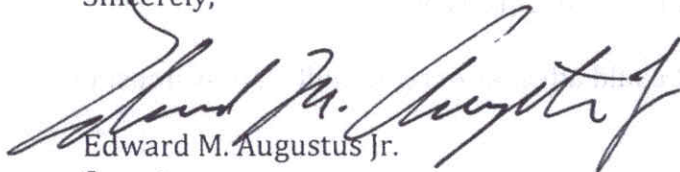
- Municipalities must notify EOHLC in writing of any proposed or active zoning amendment that affects the district, or of any other by-law, ordinance, rule, regulation, or municipal action that limits the development of multi-family housing in the District. This notification must be sent to [EOHLC3A@mass.gov](mailto:EOHLC3A@mass.gov) prior to any planning board public hearing on the proposed zoning amendment.
- EOHLC may establish a system to monitor compliance over time to ensure that approved districts allow multi-family housing in accordance with the criteria under which they were approved.
- OHLC may rescind a determination of conditional district compliance or require changes to the District to remain in conditional compliance as per Section 10 of the Guidelines if it becomes aware of additional information not identified in this conditional compliance review that would render the District noncompliant with Section 3A.
- Permitting conducted in connection with the additional factors listed above must not effectively reduce the estimated multi-family unit capacity of the District. If those factors reduce the estimated multi-family unit capacity of the District, EOHLC may revisit Newton’s

conditional compliance with Section 3A, and could require the City to remedy any deficiency with amendments to its zoning.

EOHLC will reconsider the City of Newton's application, and any additional materials it may provide, 180 days from the date of this letter, to determine whether the City has taken steps to make the changes required to address the conflicts with Section 3A and the Guidelines, which are noted above.

If you have questions or need further assistance regarding this determination, please contact MBTA Communities Compliance Coordinator Nathan Carlucci, at [nathan.carlucci@mass.gov](mailto:nathan.carlucci@mass.gov).

Sincerely,



Edward M. Augustus Jr.  
Secretary

cc: Senator Cynthia Stone Creem, [Cynthia.Creem@masenate.gov](mailto:Cynthia.Creem@masenate.gov)  
Representative Ruth Balser, [Ruth.Balser@mahouse.gov](mailto:Ruth.Balser@mahouse.gov)  
Representative Kay Khan, [Kay.Khan@mahouse.gov](mailto:Kay.Khan@mahouse.gov)  
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Jennifer Caira, City of Newton [jcaira@newtonma.gov](mailto:jcaira@newtonma.gov)



Excerpt from Mayor Fuller’s “Mayor’s Newton Update,” October 17, 2024

78 Crafts Street



The 40B project at 78 Crafts Street on the

Newtonville/Nonantum border was submitted by Boylston Properties in December 2023, and the ZBA opened the public hearing on January 10, 2024. The ZBA subsequently held six additional hearings, and the developer made numerous revisions prior to the ZBA’s vote to approve the project with conditions on Wednesday evening. (The project materials and the ZBA decision (which will be issued next week) can be found [here](#).)

The existing 78 Crafts Street site includes a mix of light industrial uses, such as automotive services, an engineering office, and one two-family residence.

The proposed project will include four buildings totaling 295 units (reduced from 307 units as originally proposed), 59 units or 20% of the total will be affordable to households making up to 50% AMI. This is notable as this is the first 40B project of this size approved by the City of Newton with this level of deep affordability for prospective residents.

The project went through numerous revisions over the course of time. This includes reductions in the size of the buildings, increased setbacks, the incorporation of windows, mural space, and amenity space along Crafts Street, and landscape improvements.

The project as approved also includes:

- Neighborhood Offsite Improvements: The developer will make significant traffic and pedestrian improvements near the project site. These include traffic signal improvements and equipment upgrades at the Crafts Street/Washington Street, Crafts Street/Watertown Street, and Washington Street/Adams Street/Lewis Terrace intersections. The developer will construct three raised crossings and a rapid rectangular flashing beacon signal (RRFB) along Adams Street, curb bump outs and pedestrian crossings with RRFBs on Crafts Street at the Clinton Street/Maguire Court and Ashmont Street intersections, and provide additional pedestrian improvements including RRFBs at six additional locations along Watertown Street, Pearl Street, Crafts Street, and Hawthorn Street.
- New Public Open Space: The developer will provide a linear walking path through the site and seating areas open to the public, providing a bicycle and pedestrian connection between Crafts Street and Court Street. A playground will also be provided on site and will be open to the public.
- Improved Stormwater Management: The existing site has mostly gravel and paved areas and lacks any stormwater infrastructure. The developer will be required fully comply with the City's Stormwater Ordinance, including retention of the volume of runoff equivalent to two inches of rain. The developer also made revisions to the project to address concerns about the potential for groundwater flow to neighboring properties.
- Mitigation Funding: The developer will pay approximately \$720,000 to the City for inflow and infiltration improvements in Newton's sewer system and provide an additional \$1.16 million for additional transportation and infrastructure improvements in the vicinity.

#### 40B Safe Harbor Status

In Massachusetts, developers of housing have greater leeway in cities and towns that have not met the State's minimum threshold for providing affordable housing – 10% of a community's year-round housing units on the State's Subsidized Housing Inventory (SHI).

As of January 2024, Newton has currently reached "safe harbor" status with over 10% (10.64% as of today) of year-round housing that is eligible for the state's subsidized housing inventory (SHI), which requires housing to be affordable to people earning up to 80% of the area median income (AMI). Find Newton's most recent SHI status [here](#).

The 40B applications for 78 Crafts Street and 41 Washington Street were both filed prior to Newton achieving "safe harbor" status last January.

The City of Newton's Law Department issued guidance to the ZBA in February on the implications of reaching this milestone moving forward, which you can read [here](#).

No additional 40B applications are pending before the ZBA at this time. When a new 40B application is filed, Planning and Law staff will update the safe harbor calculation.

Please know that the achievement of a "safe harbor" still allows our Zoning Board of Appeals the ability to grant additional comprehensive permits to developers seeking to construct housing.