



Programs & Services Committee Agenda

City of Newton In City Council

Wednesday, March 22, 2017

7:45PM
Room 211

Items Scheduled for Discussion:

- #45-17** **Resolution to commemorate Newton residents in World War I**
COUNCILOR YATES proposing a Resolution to urge all relevant City agencies to commemorate the participation of Newton residents in World War I, honor their courage, idealism and suffering, and learn from the consequences of the war.
[02/27/17 @ 2:15PM]
- #300-16** **Ordinance to register lobbyists**
COUNCILORS COTE, NORTON AND HARNEY proposing an ordinance to register lobbyists in the City of Newton. [08/10/16 @ 3:11 AM]
- #158-16** **Ordinance to require notice on gas pumps relative to climate change**
COUNCILORS NORTON AND SANGIOLO requesting an ordinance that requires a notice posted on retail gas station pumps within the City of Newton that informs consumers that burning gasoline contributes to climate change; and a link to a City website page offering information regarding alternatives to gasoline powered transportation, including walking, biking, public transit and electric vehicles.
[04/25/16 @ 9:02 AM]
- #56-16** **Ordinance amendment to add statutory references to policy on housing practices**
COUNCILOR HESS-MAHAN requesting an amendment to Chapter 12, Section 50(b) *Policy of the city regarding housing practices*, to add statutory references to Title VI of the Civil Rights Act of 1964; the Americans with Disabilities Act; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act; and any other applicable state or federal laws that were inadvertently omitted from the current ordinance.
[02/08/16 @ 1:51 PM]

The location of this meeting is 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 Coordinator, Jini Fairley, at least two business days in advance of the meeting: 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.

Items not Scheduled for Discussion at this meeting:

Referred to Finance and Appropriate Committees

- #359-16** **Submittal of the FY 2018 to FY 2021 Capital Improvement Plan**
HIS HONOR THE MAYOR submitting the Fiscal Years 2018 to 2022 Capital Improvement Plan pursuant to section 5-3 of the Newton City Charter. [10/11/16 @ 11:28 AM]

Public hearing assigned for April 5th:

- #31-15(5)** **Citizens Petition to amend the noise ordinance relative to leaf blowers**
PHILIP JEPSEN ET AL. submitting a petition, pursuant to Article 10, Section 2 of the City of Newton Charter, to amend Section 20-13, Noise Control, in the City of Newton Ordinances as it relates to dates and hours of operation of leaf blowers and types of leaf blowers allowed. [02/21/17 @ 8:37 AM]

- #31-15(6)** **Amendment to noise ordinance relative to leaf blowers**
COUNCILOR LEARY proposing to amend Chapter 20, Restrictions on use of leaf blowers, to specify permitted hours of use of electric and battery powered leaf blowers from Memorial Day through Labor Day and to exclude, at all times, the use of gasoline or fuel-based generators to charge leaf blower batteries or to power electric leaf blowers. [03/13/17 @ 3:26PM]

- #34-13** **Ordinance to prohibit polystyrene food/beverage containers**
ALD. DANBERG, ALBRIGHT, BLAZAR, RICE, LINSKY AND CROSSLEY requesting a prohibition on polystyrene-based disposable food or beverage containers in the City of Newton if that packaging takes place on the premises of food establishments within the City. [01/03/13 @ 11:01 AM]

Referred to PS&T, Programs & Services, Public Facilities and Finance Committees

- #59-17** **Appropriate \$350,000 for construction of a Parks & Recreation/Police building**
HIS HONOR THE MAYOR requesting authorization to appropriate three hundred fifty thousand dollars (\$350,000) from Overlay Surplus for the purpose of funding the construction of a new combined Parks & Recreation and Police Department facility to be located at the Elliot Street DPW yard. [02-17-17 @ 9:29 AM]

Referred to Programs & Services and Public Safety & Transportation Committees

- #46-17** **Discussion regarding how community policing works**
COUNCILOR ALBRIGHT requesting a discussion with the Chief of Police and/or members of his department to explain to the City Council how “community policing” works in Newton, how it differs from traditional policing, how staffing differs from traditional departments, and how it benefits Newton. [02/20/17 @ 3:21 PM]

- #363-16** **Amendment to the City Council Rules for yearly review of City Clerk's salary**
PRESIDENT LENNON AND VICE PRESIDENT LAPPIN requesting an amendment to Article XI of the Rules and Orders of the City Council to require an annual review of the salary of the City Clerk/Clerk of the Council. [10/26/16 @ 3:58 PM]

Referred to Programs & Services and Public Facilities Committees

- #344-16** **Discussion regarding oversight of all city/school buildings to improve efficiencies**
COUNCILOR LAPPIN requesting a discussion regarding the Public Buildings Department overseeing all public buildings, including School Department facilities, to improve efficiencies. [10/07/16 @ 10:47 AM]

- #301-16** **Amendment to the Tree Preservation Ordinance**
COUNCILOR SANGIOLO requesting an amendment to the Tree Preservation Ordinance so that any tree removal requested by a city department be forwarded to the Urban Tree Commission and all tree removal requests under the Tree Preservation Ordinance be posted online to give residents and interested citizens notification. [08/09/16 @10:30 PM]

- #264-16** **Ord. requiring Councilor notice of and involvement in street tree waiver requests**
COUNCILORS HESS-MAHAN, NORTON, KALIS, COTE, DANBERG, HARNEY, SANGIOLO, LEARY AND YATES requesting an ordinance requiring that Councilors from each respective ward be given notice and a meaningful opportunity to object to granting a hardship waiver or permit to remove a street tree. [07/21/16 @ 11:40 AM]

Referred to Land Use, Programs & Services, and Finance Committees

- #256-16** **Request to extend notification area of notice for special permit petitions**
COUNCILORS COTE, NORTON, HARNEY, BLAZER, BROUSAL-GLASER, AND LEARY requesting an amendment to the City Council Rules, Article X; Section 6 – Additional Notification Requirements, to include that the area of notice for special permit petitions be expanded beyond the abutters to abutters within 300' required by Massachusetts General Law Chapter 40A to also include property owners within 600' of the subject property. This notification will apply to all classes of building except for residential 1 and 2-family units that will remain 1 or 2-family units after receiving a special permit. Only abutters to abutters within 300' will be entitled to the rights conferred by Massachusetts General Law Chapter 40A [07/01/16 @2:09 PM]

Referred to Programs & Services, Public Facilities and Finance Committees

- #175-16** **Authorization to enter into a settlement agreement with National Grid.**
HIS HONOR THE MAYOR requesting authorization for the City to enter into a settlement agreement with Boston Gas Company d/b/a National Grid. [04/25/16 @ 6:52 PM]

Referred to Programs & Services and Public Facilities Committees

#141-15

Discussion on tracking the gas utility infrastructure in Newton

ALD. BROUSAL-GLASER, SANGIOLO, HESS-MAHAN, COTE, NORTON AND ALBRIGHT

requesting a discussion with *the Director of Urban Forestry*, a representative of the Department of Public Works and a representative of the Law Department about tracking and improving the condition of the gas utility infrastructure in Newton, new state statutes governing infrastructure repairs, coordination of increased repair work with city operations, the status of negotiations with National Grid to compensate for tree deaths resulting from gas leaks, and the possibility of creating a utilities working group to monitor progress on these and related issues.

05/26/15 @ 2:53 PM]

Referred to Programs & Services and Public Facilities Committees

#201-15

Discussion of the condition of the Kennard Estate on Dudley Road

ALD. SANGIOLO requesting a discussion with the Commissioner of Public Buildings, the Commissioner of Parks and Recreation, and the Executive Department regarding the condition of the property located at 246 Dudley Road (Kennard Estate) and how much, if any, repairs and upgrades will be needed as the City relocates the Parks and Recreation Department to that location. [09/01/15 @ 4:00 PM]

#483-14

Resolution to promote cooperative programs with food establishments

PROGRAMS & SERVICES COMMITTEE proposing a RESOLUTION to promote a cooperative program with food establishments in the City, the Newton-Needham Chamber of Commerce, the Economic Development Commission, the Director of Economic Development and members of the Board of Aldermen, to find opportunities for these establishments to provide their food services for events in the City. [12/02/14 @ 3:56 PM]

Referred to Programs & Services and Finance Committees

#216-14

Ordinance amendment for notification of vacancy of unit and/or condo conversion

ALD. HESS-MAHAN, ALBRIGHT, BAKER, CROSSLEY, NORTON AND SANGIOLO

proposing the following amendments to Chapter 12 Health and Human Services of the Revised Ordinances to:

- require owners of dwellings requiring a Certificate of Habitability under Section 12-1 and real estate agents/brokers who receive compensation in connection with the particular real estate transaction to notify the Commissioner of Health and Human Services whenever an apartment, tenement, or room in a lodging house is vacated by the occupant or when an area in an existing building is converted to a condominium prior to being reoccupied by a new tenant, lodger or occupant;

- require educational institutions to disclose addresses of undergraduates living off-campus in Newton;
- require a fee for certification; and
- impose a fine for violation of these provisions. [05/14/14 @11:51 AM]
FINANCE VOTED NO ACTION NECESSARY 7-0 12/14/15

#398-13 **Discussion of complementary ordinance or regulations for Marijuana Dispensaries**
ALD. BAKER & DANBERG requesting a discussion of a possible ordinance, regulations or otherwise, to complement zoning regulation of any licensed Registered Marijuana Dispensaries to respond to any secondary impacts so as to make the operation of such dispensaries as successful as possible. [10/28/13 @ 10:00 AM]

UPDATE ITEMS:

Referred to Programs & Services Committees and Public Facilities
#12-17 **Request for updates on the Library Expansion Project**
COUNCILORS CROSSLEY, ALBRIGHT AND BLAZAR requesting periodic updates from the Library Trustees and Library Director on the Library expansion project. [01/03/2017 @ 3:55 PM]

Referred to Programs & Services Committees and Public Facilities
#13-17 **Request for updates on the Archive Expansion Project**
COUNCILORS CROSSLEY, ALBRIGHT, AND BLAZAR requesting periodic updates from the City Clerk on the Archives expansion project. [01/03/2017 @ 3:56 PM]

Referred to Programs & Services and Public Facilities Committees
#27-16 **Updates from the Administration on the renovations at the Aquinas site**
PROGRAMS & SERVICES AND PUBLIC FACILITIES COMMITTEES requesting that the School Department and/or Executive Department provide updates on removal of asbestos and other toxic materials that were identified at the Aquinas site, the scope and timing of window replacement in particular, and renovations that may be necessary to facilitate short and long-term plans for uses and operations at the site. [01/10/16 @ 1:14 PM]

Referred to Programs & Services and Public Safety & Transportation Committees
#312-15 **Update from Health Department on opiate overdose epidemic**
ALD. COTE, HARNEY AND NORTON, requesting a review and discussion of the opiate overdose epidemic including an update from the Health Department appraising the board on the current situation to include comparative statistics from previous years as to the number of opiate overdoses handled by first responders. In addition, what is being done immediately to take this on and what support can the Board provide

#377-14 Discussion of proposed changes of use of the Senior Center

THE PROGRAMS & SERVICES COMMITTEE requesting a discussion with the Director of Senior Services, the Council on Aging and the Executive Department relative to changes in the use of the Senior Center at 345 Walnut Street. [10/16/14 @ 5:43 PM]

Referred to Programs & Services and Public Facilities Committees

#119-14 Update from Inspectional Services on ADA compliance of City properties

ALD. ALBRIGHT AND CROSSLEY requesting discussion with the Inspectional Services Department to explain the development of short and long term plans to identify and correct buildings, sidewalks, playgrounds, etc., that do not conform to American Disability Act (ADA) standards. The discussion should include information on how improvements will be incorporated into the Capital Improvement Plan or if less than \$75,000 into a comprehensive budget plan to correct ADA deficiencies. [03/12/14 @ 4:18 PM]

Respectfully Submitted,

John B. Rice, Chair

RECEIVED
NEWTON CITY
2016 AUG 10 PM 3:33
David A. O'Brien
Newton, MA 02459

Registration of Lobbyists

1) Purpose: The primary goal of this ordinance is to preserve the integrity and transparency of the democratic process, by mandating the registration of those who are hired to promote and influence a legislative agenda.

2) Definitions:

City Official: the Mayor and members of the City Council; any Board member, Commission member or other appointee of the Mayor; City Department Heads.

Compensation: any economic consideration in any form, in exchange for services rendered or to be rendered in the future, which shall include any remuneration of any value, direct or indirect.

Lobbying: a communication, by any means, from a lobbyist to a City Official concerning any issue or docket item that will foreseeably be decided or voted upon by that City Official, which seeks to influence, convince, induce, or otherwise persuade the member to decide to act or vote in a particular way.

Lobbyist: a person who is retained, without or without direct or indirect compensation for the purpose of lobbying; a person who is employed by a lobbyist organization.

3) Registration Required

a) Registration with the City Clerk's office shall be required for any person or entity that:

1) meets the definition of lobbyist or lobbyist organization as defined in section 2 above, and

2) engages in lobbying as defined in Section 2 above.

b) Any person engaging in lobbyist activity is required to register with the Clerk's Office within ten (10) days of commencing lobbyist activity, and shall renew the registration annually thereafter.

c) Registration shall consist of the following information:

- 1) name, address, telephone number of the person engaged in lobbying activity,
- 2) name and address of the source of compensation for lobbying
- 3) a description of the action, docket item, or subject matter, the lobbyist seeks to influence,

- 4) amount of compensation received in connection with lobbying activity at the time of registration; if compensation cannot be calculated, then a brief description of the compensation shall be made;
- d) The cost of registration shall be \$100 per lobbyist.
- e) Failure to register, or failure to renew registration, while conducting lobbyist activities will be considered a violation of this ordinance.
- f) Renewal of registration will not be required upon the cessation of lobbying activity, with proper notice to the City Clerk's office.

4) Exceptions

The following individuals and entities are exceptions to the definitions in Section 2, and the Registration requirements of Section 3:

- a) officials of any local, state or federal agency acting in their official capacity,
- b) a person, or group of people, advocating on their own behalf for their own interests,
- c) an employee of a non-profit organization, advocating on an issue impacting a constituent of that entity.

5) Reporting Requirements

A person who meets the threshold requirements of Section 2(a) must file an annual report with the City Clerk's Office. The annual report shall consist of the following information:

- a) Name, business address, and telephone number of the lobbyist
- b) If applicable, names of the owners of the business, or if a corporation, the names of the officers of the business.
- c) Name, business address and telephone number of each client for whom the lobbyist is performing lobbying activity in the City;
- d) A brief description of the nature of each client's business;
- e) A brief description of the actions, docket items, legislative or administrative activities the lobbyist seeks to influence on behalf of each client;
- f) Name of each person employed by the lobbyist to conduct lobbying activity in the City;

- g) Any donations to any entity on behalf of a City Official
 - i) A complete and comprehensive accounting of any expenses that are paid on behalf of any client for the purpose of lobbying a City Official
 - k) The total amount of compensation received for services as a lobbyist for the purpose of lobbying any City Official; an accounting shall be made for each client for whom a lobbyist is compensated
 - l) A contact log consisting of a recording of all contacts made with City Officials for the purpose of lobbying. The contact information shall include all phone records, emails and other correspondence by and between the lobbyist and a City Official.
- 6) Enforcement (TBD)
- 7) Penalties: A violation of any section of this Ordinance shall result in a fine of ____.
- 8) This Ordinance shall be interpreted in accordance with chapter 268B of the General Laws, and nothing herein shall be construed to limit the prohibitions, restrictions, duties obligations or requirements thereunder.
- 9) Severability: If any provision of this Ordinance is held to be invalid by a court of competent jurisdiction then such provision shall be considered severable from the remaining provisions, which shall remain in full force and effect.

Massachusetts lobbying law

The Massachusetts lobbying law was recently amended, and the changes are effective as of September 29, 2009.

For a full text of the lobbying law, refer to M.G.L. c. 3, §§ 39 – 50 in an official edition of the Massachusetts General Laws.

Chapter 3: Section 39. Definitions

Section 39. As used in sections thirty-nine to fifty, inclusive, the following words shall, unless the context clearly indicates otherwise, have the following meanings:—

“Act to communicate directly with a covered executive official to influence a decision concerning policy or procurement”, shall include any direct communication by a person to such official by telephone, mail, commercial messenger, facsimile transmission, electronic mail, other direct means or in person, but shall not be deemed to include the following activities:

- (a) a request for a meeting, a request for the status of an action or any similar administrative request, if the request does not include an attempt to influence a covered executive official;
- (b) an act made in the course of participation in an advisory committee or task force;
- (c) providing information in writing in response to a written request for specific information by an officer or employee of the executive branch or an authority, including, but not limited to, statewide constitutional officers and employees thereof;
- (d) an act required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation or other action of the executive branch or an authority, including, but not limited to, statewide constitutional offices;

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(e) a communication made to an officer or employee of the executive branch or an authority, including, but not limited to, statewide constitutional officers and employees thereof, with regard to: (1) a judicial proceeding or a criminal or civil law enforcement inquiry, investigation or proceeding; or (2) a filing or proceeding that the executive branch or an authority, including, but not limited to, statewide constitutional offices, is specifically required by statute or regulation to maintain or conduct on a confidential basis; if such executive branch or authority, including, but not limited to, statewide constitutional offices, is charged with responsibility for such proceeding, inquiry, investigation or filing;

(f) an act made in compliance with written agency procedures regarding an adjudicatory proceeding, as defined in section one of chapter thirty A, conducted by the agency, or similar adjudicatory or evidentiary proceedings conducted by any department, board, commission or official not governed by chapter thirty A;

(g) a petition for action by the executive branch or an authority, including, but not limited to, statewide constitutional offices made in writing and required to be a matter of public record pursuant to established procedures of such executive branch or authority, including, but not limited to, statewide constitutional offices;

(h) an act made on behalf of an individual with regard to that individual's benefits, employment or other personal matters;

(i) a response to a request for proposals or similar invitation by an officer or employee of the executive branch or an authority, including, but not limited to, statewide constitutional officers and employees thereof, for information relevant to a contract;

(j) participation in a bid conference;

(k) an appeal or request for review of a procurement decision.

“Authority”, any public instrumentality of the commonwealth which is not subject to the supervision and control of either the legislative, executive or judicial

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departments of state government, or of any city, town, or county within the commonwealth, and which does not receive state appropriations either for operations or the payment of debt obligations. Notwithstanding the foregoing provisions, the following entities shall be considered to be authorities: Bay State Skills Corporation, Boston Metropolitan District, centers of excellence, Community Economic Development Assistance Corporation, Community Development Finance Corporation, Government Land Bank, Massachusetts Bay Transportation Authority, Massachusetts Convention Center Authority, Massachusetts Corporations for Educational Telecommunications, Massachusetts Educational Loan Authority, Massachusetts Health and Educational Facilities Authority, Massachusetts Housing Finance Agency, Massachusetts Industrial Finance Agency, Massachusetts Industrial Service Program, Massachusetts Legal Assistance Corporation, Massachusetts Municipal Wholesale Electric Company, Massachusetts Port Authority, Massachusetts Product Development Corporation, Massachusetts Technology Development Corporation, Massachusetts Technology Park Corporation, Massachusetts Turnpike Authority, Massachusetts Water Resources Authority, Nantucket land bank, Pension Reserves Investment Management Board, State College Building Authority, Southeastern Massachusetts University Building Authority, Thrift Institutions Fund for Economic Development, University of Lowell Building Authority, University of Massachusetts Building Authority, Victim and Witness Board, Woods Hole, Martha's Vineyard, and Nantucket Steamship Authority, Worcester Business Development Corporation, the several regional transit authorities, the several regional school districts, the several solid waste districts, the several water, sewer, and fire districts, the several local housing authorities, the several local redevelopment authorities, and the several home care corporations.

"Client", any person, corporation, partnership, association, or other entity that contracts with another person, corporation, partnership, association, or other entity to receive lobbying services.

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“Covered executive official”, the governor, lieutenant governor, state secretary, attorney general, state treasurer, state auditor, any person who holds a major policy making position, as defined in section one of chapter two hundred and sixty-eight B, and as designated by the governor, lieutenant governor, state secretary, attorney general, state treasurer or state auditor in accordance with the provisions of said chapter two hundred and sixty-eight B, the secretary or deputy or assistant secretary of any executive office, or the executive or administrative head or deputy or assistant head of any authority, any department, board, commission, or division of the state government or subdivision of any of the foregoing, but not including the legislative and judicial departments.

“Executive agent”, a person who for compensation or reward engages in executive lobbying, which includes at least 1 lobbying communication with a government employee made by said person. The term “executive agent” shall include a person who, as part of his regular and usual business or professional activities and not simply incidental thereto, engages in executive lobbying, whether or not any compensation in addition to the salary for such activities is received for such services. For the purposes of this definition a person shall be presumed to be engaged in executive lobbying that is simply incidental to his regular and usual business or professional activities if he: (i) engages in executive lobbying for not more than 25 hours during any reporting period; and (ii) receives less than \$2,500 during any reporting period for executive lobbying.

“Executive lobbying,” any act to promote, oppose, influence, or attempt to influence the decision of any officer or employee of the executive branch or an authority, including but not limited to, statewide constitutional officers and employees thereof, where such decision concerns legislation or the adoption, defeat or postponement of a standard, rate, rule or regulation promulgated pursuant to any general or special law, or any act to communicate directly with a covered executive official to influence a decision concerning policy or procurement; provided further, that executive lobbying shall include acts to influence or attempt

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to influence the decision of any officer or employee of a city or town when those acts are intended to carry out a common purpose with executive lobbying at the state level; and provided further, that executive lobbying shall include strategizing, planning, and research if performed in connection with, or for use in, an actual communication with a government employee; and provided, further, that “executive lobbying” shall not include providing information in writing in response to a written request from an officer or employee of the executive branch or an authority for technical advice or factual information regarding a standard, rate, rule or regulation, policy or procurement for the purposes of this chapter.

“Legislation”, bills, resolutions and proposals of every kind, character or description considered by the general court or any committee thereof, or the governor.

“Legislative agent”, a person who for compensation or reward engages in legislative lobbying, which includes at least 1 lobbying communication with a government employee made by said person. The term “legislative agent” shall include a person who, as part of his regular and usual business or professional activities and not simply incidental thereto, engages in legislative lobbying, whether or not any compensation in addition to the salary for such activities is received for such services. For purposes of this definition a person shall be presumed to be engaged legislative lobbying that is simply incidental to his regular and usual business or professional activities if he: (i) engages in legislative lobbying for not more than 25 hours during any reporting period; and (ii) receives less than \$2,500 during any reporting period for legislative lobbying.

“Legislative lobbying,” any act to promote, oppose, influence or attempt to influence legislation, or to promote, oppose or influence the governor’s approval or veto thereof including, without limitation, any action to influence the introduction, sponsorship, consideration, action or non-action with respect to any legislation; provided further, that legislative lobbying shall include acts to influence or attempt to influence the decision of any officer or employee of a city or town when those

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acts are intended to carry out a common purpose with legislative lobbying at the state level; and provided further, that legislative lobbying shall include strategizing, planning and research if performed in connection with or for use in an actual communication with a government employee; provided, however, that “legislative lobbying” shall not include providing information in writing in response to a written request from an officer or employee of the legislative branch for technical advice or factual information regarding any legislation for the purposes of this chapter.

“Lobbyist entity”, an entity providing lobbyist services, consisting of at least 1 legislative or executive agent, including foreign or domestic corporation, association, sole proprietor, partnership, limited liability partnership or company, joint stock company, joint venture or any other similar business formation.

“Policy”, a plan or course of action which is applicable to a class of persons, proceedings or other matters and which is designed to influence or determine the subsequent decisions and actions of any covered executive official, including, but not limited to, a plan or course of action which would constitute a “regulation”, as defined in chapter thirty A. The term shall not include the adjudication or determination of any rights, duties, or obligations of a person made on a case by case basis, including but not limited to the issuance or denial of a license, permit, or certification or a disciplinary action or investigation involving a person.

“Procurement”, the buying, purchasing, renting, leasing or otherwise acquiring or disposing, by contract or otherwise, of supplies, services or construction or the acquisition or disposition of real property or any interest therein, including, but not limited to, the purchase, lease or rental of any such real property or the granting of easements or rights of way therein; but not including any item of expenditure the value of which is twenty-five thousand dollars or less.

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Chapter 3: Section 40. Repealed, 2004, 149, Sec. 6

Chapter 3: Section 41. Docket of executive and legislative agents and lobbyists; annual registration statements; annual filing fee; identification cards

Section 41. The state secretary shall keep a docket which may be in the form of an electronic database. All information required to be filed under this section shall be organized into the docket and shall be open and accessible for public inspection during normal business hours.

The state secretary shall offer educational seminars on the requirements of sections 39 to 50, inclusive, for all legislative agents and executive agents. The seminars shall be conducted in person or offered online through the state secretary's website. All legislative and executive agents shall: (i) before registering with the state secretary and annually thereafter, complete an in person or online seminar offered by the state secretary; and (ii) complete an in person or online seminar offered by the state secretary upon any material change to sections 39 to 50, inclusive, or any regulations promulgated pursuant thereto. The superintendent of the bureau of state office buildings shall, upon request of the state secretary, provide at no cost to the state secretary suitable facilities for such seminars. The state secretary shall adopt regulations for the administration and enforcement of this section.

Each legislative agent, executive agent and lobbyist entity shall file an annual registration statement with the state secretary on forms prescribed and provided by the state secretary. The annual registration shall be completed not later than December 15 of this year preceding the registration year.

A client retaining the services of a legislative agent, executive agent or lobbyist entity shall also file an annual registration statement with the state secretary on

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forms prescribed and provided by the state secretary. The annual registration shall be completed not later than December 15 of the year preceding the registration year.

A client or lobbyist entity hiring, employing or agreeing to employ a lobbyist entity, legislative agent or executive agent after January 1 of the registration year shall, within 10 days after such employment or agreement, cause the name of the lobbyist entity, legislative agent or executive agent to be registered with the state secretary as provided in this section. Notice of termination of such employment shall also be filed promptly with the state secretary by the client or lobbyist entity.

The state secretary shall assess each lobbyist entity an annual filing fee of \$1,000 to register the entity on the docket. The state secretary shall assess each legislative agent and executive agent an annual filing fee of \$100 upon entering the agent's name on the docket. The state secretary shall assess each client an annual filing fee of \$100 for each lobbyist entity hired by them upon entering the name upon the docket. The state secretary may, in his discretion and upon written request, waive the filing fees not a not-for-profit client or a lobbyist entity which registers to exclusively represent not-for-profit clients.

Upon registration, the state secretary shall issue to each legislative agent and executive agent a license which shall entitle the holder to act as a legislative agent and executive agent for a client that has filed a registration statement pursuant to this section. A nontransferable identification card shall evidence this license and shall include the agent's name and photograph. Each license shall expire on December 31 of each year. Out-of-state legislative agents and executive agents shall submit 3 passport-sized photographs to the state secretary upon registration.

The state secretary shall, upon written request from a person who is or may be subject to sections 39 to 50, inclusive, render advisory opinions on the requirements of those sections. An opinion rendered by the state secretary, unless amended or revoked, shall be a defense in a criminal action brought pursuant to

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sections 39 to 50, inclusive, and shall be binding on the state secretary, the attorney general or the district attorney in any subsequent proceedings concerning the person who requested the opinion and who acted in good faith, unless material facts were omitted or misstated by the person in the request for an opinion. Such requests shall be confidential; provided, however, that the state secretary may publish such opinions if the name of the requesting person and any other identifying information is not included in such publication unless the requesting person consents to such inclusion.

Chapter 3: Section 42. Agreements to influence decisions of executive branch employees or legislation for consideration prohibited

Section 42. No person shall make any agreement whereby any compensation or thing of value is to be paid to any person contingent upon a decision as described in the definition of "executive lobbying", or the passage or defeat of any legislation or the approval or veto of any legislation by the governor. No person shall agree to engage in legislative lobbying for consideration to be paid upon the contingency of the outcome of the actions described in the definition of "legislative lobbying" or that any legislation is passed or defeated.

Nothing in this section shall prohibit a person whose primary occupation is in marketing or selling a product or service for the person's company of employment from engaging in the sale of that product or service to the commonwealth for a commission or other compensation as long as the person is a full time employee for said company.

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Chapter 3: Section 43. Executive and legislative agents; itemized statement of expenditures; notification of legislators; public inspection; family gifts restricted

Section 43. On or before the fifteenth day of July, complete from January first through June thirtieth; and the fifteenth day of January, complete from July first to December thirty-first of the preceding year, every executive and legislative agent shall render to the state secretary an itemized statement, under oath, listing all campaign contributions as defined in section one of chapter fifty-five; all expenditures, and the total amount thereof, incurred, contributed or paid during the reporting period in the course of his employment as an executive or legislative agent and all expenditures made for or on behalf of statewide constitutional officers, officers and employees of such offices, members of the general court, officers and employees of the general court, officers and employees of the executive branch and officers and employees of an authority, incurred or paid during the reporting period, except that the executive or legislative agent shall not be required to report such expenditures not in the course of his employment made for or on behalf of the immediate family of such executive or legislative agent or a relative within the third degree of consanguinity of the executive or legislative agent or of his spouse or the spouse of any such relative; and except that in the case of all expenditures the executive or legislative agent shall not be required to itemize the expenditures of any one day in which the amount incurred or paid did not total thirty-five dollars or more. Such itemized accounting shall include, but not be limited to, specific expenditures for meals, gifts, transportation, entertainment, advertising, public relations, printing, mailing and telephone; and shall also include the names of the payees and the amount paid to each payee and shall further include the names of the candidate or political committee to whom or to which the contribution was made, and the amount and date of each contribution.

When such expenditure is for meals, entertainment or transportation, said expenditure shall be identified by date, place, amount, and the names of all persons

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in the group partaking in or of such meal, entertainment or transportation. No expenditure shall be split or divided for the purpose of evading any provision of this section. The state secretary shall, within thirty days of receipt of such accounting, notify persons whose names appear therein as having received campaign contributions, meals, transportation or entertainment, as to the nature of the contribution or expenditure claimed, the date and amount of the contribution or expenditure, and the person or persons who reported the contribution or expenditure.

Every legislative agent and executive agent shall include in the statement required by this section for the relevant reporting period: (1) the identification of each client for whom the legislative or executive agent provided lobbying services; (2) a list of all bill numbers and names of legislation and other governmental action that the executive or legislative agent acted to promote, oppose or influence; (3) a statement of the executive or legislative agent's position, if any, on each such bill or other governmental action; (4) the identification of the client or clients on whose behalf the executive or legislative agent was acting with respect to each such bill or governmental action; (5) the amount of compensation received for executive or legislative lobbying from each client with respect to such lobbying services; and (6) all direct business associations with public officials. The disclosure shall be required regardless of whether the legislative agent or executive agent specifically referenced the bill number or name, or other governmental action while acting to promote, oppose or influence legislation, and shall be as complete as practicable.

The state secretary shall assess a penalty for any statement which is filed by an executive or legislative agent later than the prescribed date; or, if such statement has been filed by mailing, where the postmark on such mailing is later than the prescribed date. Said penalty shall be in the amount of \$50 per day up to the twentieth day and an additional \$100 per day for every day after the twentieth day until the statement is filed. The state secretary may waive these penalties for good cause. A waiver for good cause shall not be granted for statements filed more than

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sixty days late by executive or legislative agents, or groups and organizations employing executive or legislative agents, which have never filed or have never been required to file such statements. In all other instances no waiver for good cause shall be granted when a statement has been filed more than thirty days late.

The state secretary shall prescribe and make available the appropriate statement forms which shall be open and accessible for public inspection during normal working hours.

Notwithstanding the provisions of any general or special law to the contrary, no executive or legislative agent shall knowingly offer or knowingly give to any public official or public employee, as defined in section one of chapter two hundred and sixty-eight B, or to a member of such person's immediate family any gift, as defined in said section one of said chapter two hundred and sixty-eight B, of any kind or nature, nor knowingly pay for any meal, beverage, or other item to be consumed; by such public official or employee, whether or not such gift or meal, beverage or other item to be consumed is offered, given or paid for in the course of such agent's business or in connection with a personal or social event; provided, however, that an executive or legislative agent shall not be prohibited from offering or giving to a public official or public employee who is a member of his immediate family or a relative within the third degree of consanguinity or of such agent's spouse or the spouse of any such relative any such gift or meal, beverage or other item to be consumed; provided, however, that regulations promulgated by the state ethics commission under section 6 of chapter 268B, shall apply to this provision.

Chapter 3: Section 44. Registration of organizations attempting to influence legislation; statement of expenditures; public inspection; penalty

Section 44. On or before the fifteenth day of July, complete from January first through June thirtieth; and the fifteenth day of January, complete from July first to

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December thirty-first of the preceding year, any group or organization, however constituted, not employing an executive or legislative agent which as part of an organized effort, expends in excess of two hundred and fifty dollars during any calendar year to promote, oppose, or influence legislation, or the governor's veto or approval thereof, or to influence the decision of any officer or employee of the executive branch or an authority, including, but not limited to, statewide constitutional officers and employees thereof, where such decision concerns legislation or the adoption, defeat or postponement of a standard, rate, rule or regulation pursuant thereto, or to do any act to communicate directly with a covered executive official to influence a decision concerning policy or procurement shall register with the state secretary by rendering a statement, under oath, containing the names and addresses of the principals of such group or organization, the purposes of the organization, such aforesaid decisions of such employees of the executive branch or an authority or legislation which affects those purposes, the total amount of expenditures, incurred or paid during the reporting period in furtherance of the foregoing objectives and an itemized statement containing all expenditures made for or on behalf of statewide constitutional officers, officers and employees of such offices, members of the general court, officers and employees of the general court, officers and employees of the executive branch and officers and employees of an authority. Such itemized accounting shall include, but shall not be limited to, specific expenditures for meals, transportation, entertainment, advertising, public relations, printing, mailing and telephone and the names of the payees and the amount paid to each payee. Where such expenditure is for meals, entertainment or transportation, said expenditure shall be identified by date, place, amount, and the names of all persons in the group partaking in, or of, such meal, entertainment or transportation. The itemized accounting shall also include a list of all campaign contributions, as defined in section one of chapter fifty-five, made by the group to a political candidate or committee, the name of each candidate or committee, the amount

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contributed and the date of the contribution. The statement of the group or organization shall also include a listing of the names and addresses of every person, group or organization from whom fifteen dollars or more was contributed during the year for the objectives hereinabove stated. No expenditure or contribution shall be split or divided for the purpose of evading any provision of this section. The state secretary shall prescribe and make available the appropriate statement forms which after being completed and filed with the secretary shall be organized alphabetically according to the name of the group and such files shall be open and accessible for public inspection during normal business hours.

The state secretary shall assess a penalty for any statement which is filed by such a group or organization later than the prescribed date; or, if such statement has been filed by mailing, where the postmark on such mailing is later than the prescribed date. Said penalty shall be in the amount of \$50 per day up to the twentieth day and an additional \$100 per day for every day after the twentieth day until the statement is filed. The state secretary may waive these penalties for good cause. A waiver for good cause shall not be granted for statements filed more than sixty days late by executive or legislative agents, or groups and organizations employing executive or legislative agents, which have never filed or have never been required to file such statements. In all other instances no waiver for good cause shall be granted when a statement has been filed more than thirty days late.

This section shall not apply to any group or organization that (i) does not employ an executive or legislative agent; (ii) does not realize a profit; (iii) does not make a contribution, as defined in section one of chapter fifty-five, to a political candidate or committee; (iv) does not pay a salary or fee to any member for any activities performed for the benefit of the group or organization; and (v) expends two thousand dollars or less during any calendar year to promote, oppose, or influence legislation, or the governor's veto or approval thereof, or to influence the decision of any officer or employee of the executive branch or an authority, including, but not limited to, statewide constitutional officers and employees thereof, where such

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decision concerns legislation or the adoption, defeat or postponement of a standard, rate, rule or regulation pursuant thereto, or to do any act to communicate directly with a covered executive official to influence a decision concerning policy or procurement.

Chapter 3: Section 45. Disqualification of executive or legislative agent; hearing; effect

Section 45. (a) Upon receipt of a sworn complaint signed under pains and penalties of perjury, or upon receipt of evidence which is deemed sufficient by the state secretary, the state secretary shall initiate a preliminary inquiry into any alleged violation of sections 39 to 50, inclusive. At the commencement of a preliminary inquiry into any such alleged violation, the state secretary shall notify the attorney general. All proceedings and records relating to a preliminary inquiry or initial staff review used to determine whether to initiate an inquiry shall be confidential, except that the state secretary may provide to the attorney general, the United States Attorney or a district attorney of competent jurisdiction evidence which may be used in a criminal proceeding. Any information provided by the state secretary pursuant to this section shall be confidential pursuant to this section and section 4 of chapter 268B, except that such information may be used by the officer or agency to whom it was provided in any investigation or subsequent proceedings. The state secretary shall notify any person who is the subject of the preliminary inquiry of the existence of such inquiry and the general nature of the alleged violation within 30 days of the commencement of the inquiry.

(b) If a preliminary inquiry fails to indicate reasonable cause for belief that there has been a violation of sections 39 to 50, inclusive, the state secretary shall immediately terminate the inquiry and shall within 10 days so notify, in writing, the complainant, if any, and the person who had been the subject of the inquiry.

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(c) If a preliminary inquiry indicates reasonable cause for belief that there has been a violation of sections 39 to 50, inclusive, the state secretary may initiate an adjudicatory proceeding to determine whether there has been such a violation.

(d) The state secretary may require by summons the attendance and testimony of witnesses and the production of books, papers or other financial documents directly relating to any matter being investigated pursuant to sections 39 to 50, inclusive, provided that the state secretary's subpoena power shall be limited to obtaining employment contracts and other contracts or agreements related to services rendered, work performed or compensation received in connection with executive lobbying or legislative lobbying. Any justice of the supreme judicial court or the superior court may, upon application by the state secretary, issue a summons to be served in the same manner as summonses for witnesses in criminal cases, issued on behalf of the commonwealth and all the provisions of law relative to summonses shall apply to summonses issued under this section so far as applicable. Any justice of the supreme judicial court or the superior court may upon application by the state secretary compel the attendance of witnesses summoned as aforesaid and the giving of testimony under oath before the state secretary in furtherance of any investigation in the same manner and to the same extent as before said courts.

(e) The state secretary, or his designee, may administer oaths and may hear testimony or receive other evidence in any proceeding.

(f) All testimony in an adjudicatory proceeding shall be under oath. All parties shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, to submit evidence, and to be represented by counsel. Before testifying, all witnesses shall be given a copy of the regulations governing adjudicatory proceedings.

(g) Any person whose name is mentioned during an adjudicatory proceeding of the state secretary and who may be adversely affected thereby may appear personally before the state secretary on his own behalf, with or without counsel, to

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give a statement in opposition to such adverse mention or file a written statement of such opposition for incorporation into the record of the proceeding.

(h) All adjudicatory proceedings of the state secretary pursuant to this section shall be public and shall be subject to chapter 30A.

(i) Within 30 days after completion of deliberations, the state secretary shall publish a written report of his findings and conclusions.

(j) Upon a finding pursuant to an adjudicatory proceeding that there has been a violation, the state secretary may issue an order: (1) requiring the violator to cease and desist such violation; (2) requiring the violator to file any report, statement or other information as required by sections 39 to 50, inclusive; (3) suspending for a specified period or revoking the license and registration of the violator; or (4) requiring the violator to pay a civil penalty of not more than \$10,000 for each violation. The state secretary may file a civil action in superior court to enforce this order.

(k) Final action by the state secretary under this section shall be subject to review in superior court upon petition of any party in interest filed within 30 days after the action for which review is sought. The court shall enter a judgment enforcing, modifying, or setting aside the order of the state secretary, or it may remand the proceedings to the state secretary for such further action as the court may direct. If the court modifies or sets aside the state secretary's order or remands the proceedings to the state secretary, the court shall determine whether such modification, set aside, or remand is substantial. If the court does find such modification, set aside, or remand to be substantial, the petitioner shall be entitled to be reimbursed from the treasury of the commonwealth for reasonable attorneys' fees and all court costs incurred by him in the defense of the charges contained in the proceedings. The amount of such reimbursement shall be awarded by the court but shall not exceed \$20,000 per person, per case.

(l) Any person who violates the confidentiality of an inquiry under this section shall be punished by a fine of not more than \$1,000 or by imprisonment for

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not more than 1 year, or both.

(m) The state secretary shall automatically disqualify any person convicted of a felony in violation of chapter 3, chapter 55, or chapter 268A from acting or registering as an executive or legislative agent for a period of 10 years from the date of conviction.

Chapter 3: Section 46. Docket of executive and legislative agents; maintenance; legislative year

Section 46. The docket of executive and legislative agents shall be maintained for each legislative year, beginning on the first Wednesday of January and ending at the conclusion of business on the final day before the succeeding legislative session.

Chapter 3: Section 47. Employers of executive or legislative agents; statement of expenditures; filing; penalty; public inspection

Section 47. On or before the fifteenth day of July, complete from January first through June thirtieth; and the fifteenth day of January, complete from July first to December thirty-first of the preceding year, every employer of an executive or legislative agent shall render to the state secretary a complete and detailed itemized statement, under oath, listing all expenditures incurred or paid separately by such employer during the reporting period in connection with promoting, opposing or influencing legislation, or the governor's approval or veto thereof, or influencing the decision of any officer or employee of the executive branch or an authority, including, but not limited to, statewide constitutional officers and employees

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thereof, where such decision concerns legislation or the adoption, defeat or postponement of a standard, rate, rule or regulation pursuant thereto, or doing any act to communicate directly with a covered executive official to influence a decision concerning policy or procurement and all expenditures for or on behalf of the statewide constitutional officers, officers and employees of such offices, members of the general court, officers and employees of the general court, officers and employees of the executive branch and officers and employees of an authority, and the total amount thereof incurred or paid separately by such employer during the reporting period; and except that in the case of all expenditures the employer shall not be required to itemize the expenditures of any one day in which the amount incurred or paid did not total thirty-five dollars or more. Such itemized accounting shall include, but shall not be limited to, specific expenditures for meals, gifts, transportation, entertainment, advertising, public relations, printing, mailing, and telephone; and the names of the payees and the amount paid to each payee. Where such expenditure is for meals, entertainment or transportation, said expenditure shall be identified by the date, place, amount, and names of all persons in the group partaking in, or of, such meal, entertainment, or transportation. When such compensation is included as part of a regular salary or retainer, the statement shall specify the amount of the agent's salary or retainer allocable to his legislative duties. If no such apportionment is possible, the statement shall indicate such impossibility and disclose the full salary or retainer. No expenditure shall be split or divided for the purpose of evading any provision of this section.

The state secretary shall assess a penalty for any statement which is filed by such an employer later than the prescribed date; or, if such statement has been filed by mailing, where the postmark on such mailing is later than the prescribed date. Said penalty shall be in the amount of \$50 per day up to the twentieth day and an additional \$100 per day for every day after the twentieth day until the statement is filed. The state secretary may waive these penalties for good cause. A waiver for good cause shall not be granted for statements filed more than sixty days late by

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executive or legislative agents, or groups and organizations employing executive or legislative agents, which have never filed or have never been required to file such statements. In all other instances no waiver for good cause shall be granted when a statement has been filed more than thirty days late.

The state secretary shall prescribe and make available the appropriate statement forms which after being completed and filed with the secretary shall be organized alphabetically, according to the name of the employer and such files shall be open and accessible for public inspection during normal business hours.

Chapter 3: Section 48. Violation of Secs. 40 to 44 or 47 respecting executive or legislative agents; penalties; prosecutions; enforcement procedures

Section 48. Violation of any provision of sections forty, forty-one, forty-two, forty-three and forty-four, or forty-seven shall be punished by a fine of not less than one hundred, nor more \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both. Any person acting as an executive or legislative agent who has been found guilty of violating any provisions of said sections shall in addition to such fine, be disqualified from acting as an executive or legislative agent until the termination of the third regular session of the general court after the date of conviction of such offense. Upon investigation and when deemed appropriate the attorney general shall cause prosecutions to be instituted for violation of any provision of sections forty, forty-one and forty-two.

The state secretary shall inspect all statements required by sections forty-three, forty-four and forty-seven filed with him if it appears that any person has failed to file such statement as required by said sections, or if it appears to the state secretary that any such statement filed with him does not conform to law, the state

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secretary shall within a reasonable time notify the delinquent person, group or organization in writing.

Upon failure to file a statement within fourteen days after receiving notice under this section, or if any statement filed after receiving notice indicates any violation of sections forty-three, forty-four, or forty-seven, the state secretary shall within a reasonable time notify the attorney general thereof and shall furnish him with copies of all papers relating thereto. The attorney general shall examine every such case and upon investigation and when deemed appropriate shall cause prosecutions to be instituted in the name of the commonwealth or shall institute appropriate civil proceedings pursuant to section forty-nine or refer the case to the proper district attorney for such action as may be appropriate.

Chapter 3: Section 49. Proceedings to compel filing of proper statement required by Secs. 43, 44 or 47; jurisdiction; speedy trial

Section 49. The supreme judicial court or superior court may compel any person, group, or organization failing to file a statement required by sections forty-three, forty-four or forty-seven, or filing a statement not conforming to the requirements of said sections in respect to its truth, sufficiently in detail, or otherwise to file a sufficient statement, upon the application of the attorney general. The supreme judicial court or superior court may, upon application of the attorney general, grant equitable or mandamus relief to enforce sections 41 to 43, inclusive, prohibiting the offering or giving of or paying for gifts, meals, beverages, or other items. Relief under this section may include (a) an order to pay to the commonwealth an amount equal to the value of any compensation or thing paid or received in violation of section 42, or the value of any gift, meal, beverage, or other item given or received in violation of section 43; and (b) a civil penalty of up to \$10,000 for

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each violation of sections 41 to 47, inclusive. Proceedings under this section shall be advanced for speedy trial upon the request of either party.

Chapter 3: Section 50. Sections inapplicable to public employees or agents or other persons requested to appear before committee or commission

Section 50. Sections thirty-nine to forty-nine, inclusive, shall not apply to employees or agents of the commonwealth or of a city, town, district or regional school district who are acting in their capacity as such employees or agents or to any person requested to appear before any committee or commission of the general court by a majority of the members of such committee or commission; provided, that such person performs no other act to influence legislation; and provided further, that the name of such person be recorded in the official records of such committee or commission.

Redlined draft of amendment to Section 12-50(b)(1):

(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), [M.G.L. Chapter 40A \(the Massachusetts Zoning Act\)](#), [M.G.L. Chapter 40B \(the Massachusetts Affordable Housing Act\)](#), [42 U.S.C. § 2000D, et seq. \(Title IV of the Civil Rights Act of 1964\)](#), ~~and~~ [42 U.S.C. § 3601, et seq. \(the Federal Fair Housing Act, as amended\)](#), [42 U.S.C. §§ 5301-5320 \(the Housing and Community Development Act of 1974\)](#), [29 U.S.C. § 701 et seq. \(Section 504 of the Rehabilitation Act of 1973\)](#), [42 U.S.C. §§ 6101-6107 \(the Age Discrimination Act of 1975\)](#), [42 U.S.C. Chapter 126, § 12101 et seq. \(the Americans with Disabilities Act\)](#), [998, and 42 U.S.C. § 1437 et seq. \(the Housing Act of 1937\)](#), as amended by [Pub. L. 105-276, 112 Stat. 2518 \(the Quality Housing and Work Responsibility Act of 1998\)](#), 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)

CITY OF NEWTON

IN CITY COUNCIL

[Date]

ORDINANCE NO. _____

BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2012, as amended, be and are hereby further amended as follows:

Delete **Section 12-50(b)(1) *Policy of the city regarding housing practices*** and replace with a new **Section 12-50(b)(1) *Policy of the city regarding housing practices***, as follows:

(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), M.G.L. Chapter 40A (the Massachusetts Zoning Act), M.G.L. Chapter 40B (the Massachusetts Affordable Housing Act), 42 U.S.C. § 2000D, et seq. (Title IV of the Civil Rights Act of 1964), 42 U.S.C. § 3601, et. seq. (the Federal Fair Housing Act, as amended), 42 U.S.C. §§ 5301-5320 (the Housing and Community Development Act of 1974), 29 U.S.C. § 701 et seq. (Section 504 of the Rehabilitation Act of 1973), 42 U.S.C. §§ 6101-6107 (the Age Discrimination Act of 1975), 42 U.S.C. Chapter 126, § 12101 et seq. (the Americans with Disabilities Act), 998, and 42 U.S.C. § 1437 et seq. (the Housing Act of 1937), as amended by Pub. L. 105-276, 112 Stat. 2518 (the Quality Housing and Work Responsibility Act of 1998), regarding non-discrimination in housing practices.

Under Suspension of Rules
Readings Waived and Adopted
__ yeas and __ nays __ absent

Approved as to legal form and character:

DONNALYN B. LYNCH KAHN

City Solicitor

(SGD) DAVID B. OLSON
City Clerk

(SGD) SETTI D. WARREN
Mayor

Date: _____

April 2009



AFFIRMATIVE FAIR HOUSING AND CIVIL RIGHTS POLICY



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II. Legal Context

The promotion and exercise of fair housing requires freedom from the impediments of discriminatory rental, sales, lending and insurance practices, exclusionary zoning and land use practices, and from other barriers to housing choice and residence in communities of opportunity. There is an extensive legal framework addressing these issues that creates obligations on the Commonwealth, as a whole, on DHCD and other housing agencies in particular, on municipalities, and on private entities involved in housing and community development activities. The legal framework establishes two distinct obligations: (1) to not discriminate, including the prohibition on creating “disparate impact”, and (2) to affirmatively further fair housing.

A. Duty not to Discriminate and Disparate Impact

State and federal laws, including the Massachusetts anti-discrimination law (Massachusetts General Laws Chapter 151B), the federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended), Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act, prohibit discrimination in housing. In Massachusetts, discrimination because of the following is prohibited: race; color; national origin; religion; sex; disability/handicap; familial status/children; marital status; age; sexual orientation; military status (veteran or member of the armed services); public assistance reciprocity/housing subsidy; genetic information; and ancestry.

Discriminatory housing practices include: refusing to rent, sell, negotiate, or otherwise make unavailable or deny a dwelling; steering; discriminatory terms, conditions, or privileges or discriminatory provision of facilities or services; discriminatory statements, notices, and advertising; misrepresenting availability; blockbusting; refusing to make reasonable accommodations and/or modifications for persons with disabilities; non-compliance with federal and state accessibility design and construction requirements; discriminating in residential real-estate related transactions, credit, and brokerage services; sexual harassment; and interfering, coercing, intimidating, or threatening any person in the exercise or enjoyment of their fair housing rights. Additionally, the Massachusetts law also prohibits denial of housing and discrimination against families with children under six years of age because of the existence of lead paint.¹⁴

Disparate impact is an important legal theory in which liability based upon a finding of discrimination may be incurred even when the discrimination was not purposeful or intentional. Generally, under federal precedent, the disparate impact theory applies when the plaintiff is able to prove through strong statistical evidence, that a rule or policy, albeit neutral on its face, has an adverse effect on persons protected under fair housing laws. However, in the recent *Langlois v. Abington Housing Authority* case, a Massachusetts federal court recognized a disparate impact claim, absent any showing of intent, where the defendant local housing authorities failed to

¹⁴ M.G.L. c.111, § 199A.

affirmatively further fair housing to evaluate and address such an impact.¹⁵ The court also imposed the burden on the defendant housing authority to show that its actions were the least discriminatory alternative.¹⁶

DHCD, then the Executive Office of Communities and Development, also previously opined (in 1986) on disparate impact in the context of state-aided public housing minority affirmative action preferences for tenant selection:

Disparate impact on racial minorities cannot be ignored by a state agency charged with regulatory oversight of a state wide, publicly supported housing program. Remedial efforts are justified and warranted. Nor is the effect likely to change without such affirmative efforts given the percentages of local minority residents in the state's communities.¹⁷

Some federal courts have required some showing of discriminatory intent when evaluating whether the public defendant has a legitimate justification for its actions.¹⁸ However, in contrast to equal protection claims under the U.S. Constitution, the Supreme Court has held that evidence of discriminatory intent is *not* necessary under a federal statutory prohibition against discrimination.¹⁹

Establishing disparate impact may be achieved through a variety of measures.²⁰ The defendant must then generally establish that there was a legitimate justification for the policy and that there were not less discriminatory actions the defendant could have alternatively taken.

¹⁵ 234 F. Supp. 2d 33 (D. Mass. 2002) (finding disparate impact on minorities where the community had a smaller proportion of minority residents than the larger geographical area in which Section 8 applicants were drawn, where local preferences applied to the PHA program waiting lists led to significantly fewer minorities actually participating in PHA programs than minorities waiting to participate in PHA programs, and where the justification of need for the residency preferences was not sufficient); *see also Comer v. Cisneros*, 37 F.3d 775 (2d Cir. 1994).

¹⁶ *Id.*

¹⁷ Memorandum by Hollis Young, Chief Counsel, December 1, 1986.

¹⁸ *See e.g., Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 558 F.2d 1283 (7th Cir. 1977) (holding the following four-factor analysis should be applied: 1) the strength of the plaintiff's showing of discriminatory effect; 2) evidence of the defendant's discriminatory intent (though this be insufficient to make out an intentional violation); 3) the defendant's interest in taking the challenged action; 4) whether the plaintiff seeks to compel the defendant to affirmatively provide housing or merely to refrain from interfering with others who wish to provide housing).

¹⁹ *Id.* (holding that absent evidence of discriminatory purpose, the Village of Arlington Heights could not be held in violation of the Equal Protection Clause of the Fourteenth Amendment for denying the rezoning necessary for the development of low-income housing, even though the denial disproportionately affected African Americans); *but see Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) (employment discrimination case in which the Supreme Court holding that the absence of evidence of discriminatory intent does not absolve the defendant from liability under Title VII of the Civil Rights Act of 1964).

Similar to disparate impact claims, perpetuation of segregation claims may also be brought to address actions that have a discriminatory effect on communities. Perpetuation of segregation claims have generally been brought against municipal defendants based upon their zoning and land use actions or decisions (even when not based upon a policy) to impede the development of housing that would increase integration in areas that are predominantly white.²¹ Perpetuation of segregation claims derive unique legitimacy under the federal Fair Housing Act due to the Act's legislative intent of desegregation. Therefore, it is arguably more difficult for governmental entities to defend against a perpetuation of segregation claim under the Fair Housing Act than against a Constitutional claim or other type of disparate impact claim.

B. The Duty to Affirmatively Further Fair Housing

While the obligation not to discriminate obviously is critical, it is the obligation to further fair housing that is most commonly overlooked and/or misunderstood, and which establishes the requirement that the Commonwealth and its political subdivisions assume an active, affirmative posture with respect to fair housing.

Prohibition of discrimination and/or the enforcement of antidiscrimination laws is not sufficient. Liability may arise when there is a failure to affirmatively further fair housing as required. Such a failure may include perpetuating racial segregation patterns and adopting other policies and activities that have a disparate impact on a protected class. Case law has not clearly established whether the duty to affirmatively further fair housing under the Fair Housing Act extends to recipients of federal housing and urban development funding beyond government entities, although federal executive orders indicate that HUD is to extend its duty to affirmatively further fair housing to the recipients of its funding. Federal Executive Order 12259 followed by Executive Order 12892 provide that federal agencies shall require applicants or participants of federal agency programs relating to housing and urban development to affirmatively further fair housing.

HUD provides examples of potential methods for affirmatively furthering fair housing, such as:

- Establishing fair housing enforcement organizations in needed areas;

²⁰ As outlined by the Citizens' Housing and Planning Association, one method is performing standard deviation statistical analysis, or calculating the extent to which actual outcomes deviate from expected outcomes; another method is the "four-fifths rule," or the standard that a selection rate of a group that is less than 80% of the selection rate of the group with the highest selection rate is evidence of disparate impact. *Meeting Local Housing Needs: A Practice Guide for Implementing Selection Preferences and Civil Rights Requirements in Affordable Housing Programs*. Citizens' Housing and Planning Association. September 2004. See also *Langlois v. Abington Housing Authority*, 234 F. Supp. 2d 33 (D. Mass. 2002). Note also that in *Commonwealth v. Lora*, 451 Mass. 425 (2008), a criminal case in which a disparate treatment claim under the Massachusetts Declaration of Rights was raised, the Massachusetts Supreme Judicial Court recognized that credible statistical evidence raising a reasonable inference of impermissible discrimination shifts the burden to the Commonwealth to provide a race neutral explanation for its actions.

²¹ See e.g., *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926 (2d Cir.) aff'd per curiam, 488 U.S. 15 (1988); *Metropolitan Housing Development Corp. v. Village of Arlington Heights* at 1290 (see supra note 18).

- Developing counseling programs promoting housing choice voucher use outside minority and low-income concentrated areas;
- Providing outreach to housing providers outside minority and low-income concentrated areas;
- Marketing available housing to persons less likely to apply for housing in a particular area; and
- Encouraging banks and other lending institutions to operate in underserved areas and for underserved populations, and to make credit and loan amount determinations that are inclusive to protected classes.

The duty to affirmatively further fair housing has statutory bases discussed in the Statutory Framework Section below. One such statute is the Housing and Community Development Act of 1974, under which state and local grantees of certain HUD funding are required to certify that they affirmatively further fair housing.²² In order to certify that it has affirmatively furthered fair housing, a jurisdiction must conduct an analysis of impediment to fair housing, take appropriate actions to overcome the impediments identified in the analysis, and maintain records reflecting action and analysis. Under the Consolidated Plan, HUD funded recipients, including DHCD and entitlement communities, are required to: (1) examine and attempt to alleviate housing discrimination within their jurisdiction; (2) promote fair housing choice for all persons; (3) provide opportunities for all persons to reside in any given housing development, regardless of race, color, religion, sex, disability, familial status, or national origin; (4) promote housing that is accessible to and usable by persons with disabilities; and (5) comply with the non-discrimination requirements of the Fair Housing Act.

Key fair housing case law relevant to the duty to affirmatively further fair housing is included in the Appendix of this document.

C. Statutory Framework

Federal Fair Housing Act (FHA) – Title VIII of the Civil Rights Act of 1968 requires that the U.S. Department of Housing and Urban Development (HUD) and all executive departments and agencies “affirmatively further the Fair Housing Act.”²³ This obligation has been interpreted to extend to recipients of HUD funding thereby extending its requirements, at a minimum, to state and local jurisdictions, and, arguably, to the ultimate grantee of such funds.²⁴ The FHA also supports DHCD’s affirmative civil rights obligations pursuant to state regulations at 760 CMR

²² Note that in the recent case *U.S. ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York* (S.D.N.Y. 2009), the U.S. District Court for the Southern District of New York denied defendant’s motion for summary judgment, finding that Westchester County violated the False Claims Act by knowingly making false certifications to affirmatively further fair housing when its Analyses of Impediments to Fair Housing did not identify impediments on the basis of race.

²³ 42 U.S.C. §3608(d).

47, which require DHCD to take into consideration fair housing compliance by potential grantees in the award of all discretionary grants.²⁵

Housing and Community Development Act of 1974 -- Requires Community Development Block Grant (CDBG) recipients – states and local government -- to affirmatively further fair housing by promoting housing opportunity and accessibility for the classes of persons protected under the Fair Housing Act. (42 USC 1437f and 5301 et seq.). The award of CDBG funds is conditioned on the certification by the state or local government that it will affirmatively further fair housing (see e.g., 42 USC 5304(b)(2)).

The Quality Housing and Work Responsibility Act of 1998 --Applies to public housing and public housing agency-administered (PHA) Housing Choice Voucher programs and requires certification to affirmatively further fair housing.

The Americans with Disabilities Act –

Title II of the Americans with Disabilities Act of 1990 (ADA) prohibits discrimination in services, programs, or activities by state and local governments and their departments, agencies, and instrumentalities.

Chapter 151B of the Massachusetts General Laws –

Chapter 151B closely mirrors the Fair Housing Act. However, Chapter 151B significantly expands the classes of persons protected under the Fair Housing Act and reduces the exemptions from liability available to a housing provider under the Fair Housing Act. Chapter 151B does not independently impose an obligation to “affirmatively fair housing.”

Chapter 40B of the Massachusetts General Laws –

Chapter 40B is a fair housing response to zoning and associated local permitting requirements that limit housing access through the exclusion of certain forms of housing. Although it does not explicitly address racial segregation, “...in its thirty-four year history...40B has proven to be a vital tool for racial inclusion by creating a more varied and affordable mix of housing types—entry points for diverse families—in local communities.”²⁶

²⁵ 760 CMR 47.04(1), “Affirmative Action Regulations Governing Recipients of EOCD/DCA Financial Assistance.”

²⁶ Glover, Blackwell, and Bell. 2005. “Equitable Development for a Stronger Nation.” In *The Geography of Opportunity: Race and Housing Choice in Metropolitan America*. Edited by Xavier De Souza Briggs, pp. 300. Brookings Institution Press.

Table 1: Applicability of Key Fair Housing Statutes to Protected Classes

	<i>Federal Statutes:</i>							<i>State Statute:</i>
Protected Class=X	Fair Housing Act (Title VIII)	Civil Rights Act of 1866 § 1981 and 1982	Title VI of the Civil Rights Act	Housing & Comm. Dev. Act (Title I, § 109)	Section 504 of the Rehabilitation Act	Title II of the Americans with Disabilities Act	Age Discrimination Act	Massachusetts Civil Rights Act (M.G.L. §151B)
Race	X	X	X	X				X
Color	X	X	X	X				X
National Origin	X		X	X				X
Religion (creed)	X			X				X
Sex	X			X				X
Familial Status	X							X
Disability	X				X	X		X
Age							X	X
Marital Status								X
Public Assistance/Housing Subsidy Reciprocity								X
Sexual Orientation								X
Military Status/Veteran								X
Ancestry/Genetics		X						X

Table 2: Applicability of Key Fair Housing Statutes to Government Units & Housing Providers

Y = Covered Entity	Z = Duty to Affirmatively Further Fair Housing							
	<i>Federal Statutes:</i>							<i>State Statute:</i>
	Fair Housing Act (Title VIII)	Civil Rights Act of 1866 § 1981 and 1982	Title VI of the Civil Rights Act	Housing & Comm. Dev. Act of 1974	Section 504 of the Rehabilitation Act of 1973	Title II of the Americans with Disabilities Act	Age Discrimination Act	Massachusetts Civil Rights Act (M.G.L. c. §151B)
Commonwealth of Massachusetts	Y, Z	Y	Y	Y, Z	Y	Y	Y	Y
DHCD	Y, Z	Y	Y	Y, Z	Y	Y	Y	Y
Municipalities	Y, Z (Z if receive federal funding)	Y	Y (if receive federal funds)	Y, Z (if receive HUD housing or community development funding specified in Act)	Y (if receive federal funds)	Y	Y (if receive federal funds)	Y
Other housing providers (including MA quasi-public agencies, property owners, developers, managers, real estate agents, brokers, etc.)**Some exceptions apply.	Y, Z * *Case law not clear whether Z extends to recipients of federal funding beyond gov't entities	Y	Y (if receive federal funds)	Y (if receive federal funds per the Act, see 24 CFR 6)	Y (if receive federal funds)	Y (to state/local government departments, agencies, and instrumentalities)	Y (if receive federal funds)	Y

Table 3: Fair Housing Policy Implementation Tasks

FAIR HOUSING TOPIC	IMPLEMENTATION TASK	RESPONSIBLE ENTITY	BASIS
Expand Opportunities - General	Incorporate a funding preference for project sponsors that will develop projects in locations that will expand opportunities and reduce concentrations of poverty for persons protected under fair housing laws	All state and local housing funding agencies	Fair Housing Act; <u>Thompson v. HUD</u> , 348 F. Supp. 2d 398 (D. Md. 2005); <u>Shannon v. HUD</u> , 436 F. 2d 809 (3d Cir. 1970); <u>U.S. v. Yonkers Board of Ed.</u> , 624 F. Supp. 1276 (SDNY 1985).
Expand Opportunities - General	Work with Office of Access & Opportunity to increase coordination among agencies to further Commonwealth's Smart Growth principles	All state agencies	Fair Housing Act; <u>Thompson v. HUD</u> , 348 F. Supp. 2d 398 (D. Md. 2005); <u>Shannon v. HUD</u> , 436 F. 2d 809 (3d Cir. 1970); <u>U.S. v. Yonkers Board of Ed.</u> , 624 F. Supp. 1276 (SDNY 1985).
Expand Opportunities - General	Work with Office of Access & Opportunity to flesh out the fair housing evaluation criteria in Commonwealth Capital scoring for state discretionary grants (see chart at p. 22)	All state agencies	Fair Housing Act; Executive Order 215; Commonwealth's Sustainable Development Principles; <u>Southern Burlington Co. NAACP v. Mount Laurel Tp.</u> , 67 NJ 151, 336 A. 2d 713 (1975); Massachusetts Constitution.
Expand Opportunities - General	Create fair housing evaluation standards for DHCD discretionary funding to communities	DHCD	Fair Housing Act; Executive Order 215; Commonwealth's Sustainable Development Principles; <u>Southern Burlington Co. NAACP v. Mount Laurel Tp.</u> , 67 NJ 151, 336 A. 2d 713 (1975); Massachusetts Constitution; 760 CMR 47
Expand Opportunities - General	Review zoning bylaws for potential discriminatory effects of the zoning, in addition to the AGO Civil Rights Division review of language for violations of civil rights laws.	DHCD	<u>Southern Burlington Co. NAACP v. Mount Laurel Tp.</u> , 67 NJ 151, 336 A. 2d 713 (1975).
Protected Classes	Examine existing local preference policy for private assisted housing to determine if 70% threshold should be lowered and/or applicant pool balancing policy should be amended to ensure that local preferences are	DHCD	Fair Housing Act; Community Development Act of 1974; <u>Langlois v. Abington Housing Authority</u> , 234 F. Supp. 2d 33 (D. Mass. 2002); <u>U.S. v. Yonkers</u>

FAIR HOUSING TOPIC	IMPLEMENTATION TASK	RESPONSIBLE ENTITY	BASIS
	not either a violation of the duty to affirmatively further fair housing and/or have a disparate impact on protected classes		<u>Board of Ed.</u> , 624 F. Supp. 1276 (SDNY 1985); <u>U.S. v. Starrett City Associates</u> , 840 F. 2d 1097 (2d Cir. 1988).
Protected Classes	Examine 100% local preference for public housing authorities (c.121B, s. 32) in light of current statutes and case law	DHCD	Fair Housing Act; Community Development Act of 1974; <u>Langlois v. Abington Housing Authority</u> , 234 F. Supp. 2d 33 (D. Mass. 2002); <u>U.S. v. Yonkers Board of Ed.</u> , 624 F. Supp. 1276 (SDNY 1985); <u>U.S. v. Starrett City Associates</u> , 840 F. 2d 1097 (2d Cir. 1988).
Expand Opportunities - General	Revise C.40B regulations, as necessary, to improve implementation and administration	DHCD	
Expand Opportunities - Families w/Children - Households of Color - Persons with Disabilities	Revise Subsidized Housing Inventory Guidelines to require appropriate balance in development of age-restricted housing in relation to housing that is not so limited	DHCD	
Expand Opportunities - Families w/Children - Households of Color - Persons with Disabilities	Provide guidance on permissible use of CORI and criminal record screening	DHCD	
Expand Opportunities - Families w/Children	Condition funding to developments and communities on the inclusion of larger units (3+ bedrooms) when there are disproportionately low affordable housing opportunities in the community for larger families.	All state housing funding agencies	Fair Housing Act; M.G.L. c. 15B

FAIR HOUSING TOPIC	IMPLEMENTATION TASK	RESPONSIBLE ENTITY	BASIS
- Households of Color			
Expand Opportunities - Families w/Children - Households of Color	Modify the tax credit Qualified Allocation Plan (QAP)'s current threshold requirement that 75% of the units in a project have two bedrooms to include a partial requirement for three plus bedrooms, or at least require an average of two units in order to accommodate both small and larger households	DHCD	Fair Housing Act; M.G.L. c. 15B
Expand Opportunities-- Persons with Disabilities	Allow for-profit developers to serve as project sponsors under the Community Based Housing (CBH) and Facilities Consolidation Fund (FCF) programs	Legislature	Americans With Disabilities Act (ADA); <u>Olmstead v. L.C.</u> , 527 U.S. 581 (1991); Fair Housing Act.
Physical Accessibility	Convene a focus group, including members of the Fair Housing Advisory Panel and the Housing Development Division, to determine the most practicable method for promoting visitability and universal design to broaden housing opportunities for persons with disabilities	DHCD	Americans With Disabilities Act (ADA); <u>Olmstead v. L.C.</u> , 527 U.S. 581 (1991); Fair Housing Act.
LEP	Create Limited English Proficiency (LEP) responsive Plan ("Language Assistance Plan or LAP") for all state programs and federal (state administered) programs (including IS – website)	All state housing funding agencies; local entities that are recipients of federal funds	Title VI of the Civil Rights Act of 1964; HUD regulations; Fair Housing Act
LEP	Create a list of resources, including interpreters, to address LEP concerns	DHCD	Title VI of the Civil Rights Act of 1964; HUD regulations; Fair Housing Act
LEP	Identify resources and collaborate with spectrum of counseling and fair housing agencies for outreach to underserved LEP groups in other languages, particularly in Spanish and Portuguese in the	DHCD	Title VI of the Civil Rights Act of 1964; HUD regulations; Fair Housing Act

FAIR HOUSING TOPIC	IMPLEMENTATION TASK	RESPONSIBLE ENTITY	BASIS
	underserved southeastern Massachusetts area		
Physical Accessibility	Identify gaps in current state and federal accessibility requirements (e.g., housing typologies that are not covered) and address through regulation and/or policy	DHCD	Americans With Disabilities Act (ADA); 527 U.S. 581 (1991); Fair Housing Act.; Rehabilitation Act; MAAB regulations
Physical Accessibility	Ensure funding programs accurately scope and monitor compliance with state and federal accessibility requirements. Provide trainings on accessibility requirements for developers and architects	All state and local housing funding agencies	
Education & Technical Assistance - Municipalities and Housing Industry	Identify opportunities to provide fair housing training, through staff resources and collaboration with other groups, for municipalities, local housing authorities, lottery agents, rental assistance administrators, developers and property managers	DHCD	Fair Housing Act; Americans With Disabilities Act (ADA); Equal Protection Clause of the 14 th Amendment; Community Development Act of 1974; DHCD Fair Housing Mission Statement
Technical Assistance - Municipalities	Provide financial and staff support to municipalities to assist in the development and implementation of comprehensive housing plans that is consistent with fair housing principles	DHCD	
Education - Consumers	Require that housing authorities, regional rental assistance administering agencies and Housing Consumer Education Centers provide information identifying the advantages of opportunity areas to households who are issued vouchers and/or relocated from public housing, or otherwise provided housing search assistance	DHCD	Fair Housing Act; HUD Memo, "Affirmatively Furthering Fair Housing in the CDBG," Feb. 9, 2007; Title VI of the Civil Rights Act of 1964; HUD Moving to Opportunity (MTO) Project
Expand Opportunity - General	Evaluate the state voucher programs, as well as the federal voucher program administered by the Commonwealth, on a regular basis and take action, as necessary, to ensure that the voucher payment standards are sufficient by market area to further mobility to low poverty, high opportunity areas	DHCD	Fair Housing Act; HUD Memo, "Affirmatively Furthering Fair Housing in the CDBG," Feb. 9, 2007; HUD Moving to Opportunity (MTO) Project