

## General Description

At the request of the Newton Fair Housing Committee (NFHC), the City of Newton's Department of Planning and Development commissioned this report on the City's efforts to assure the accessibility of housing and related facilities for persons with disabilities. The review was undertaken in order to evaluate how the various departments of Newton City government and the Newton Housing Authority manage the requirements, policies and procedures that pertain to accessibility, and to recommend ways in which the City and the Newton Housing Authority can be supportive of such needs. This report was prepared by Barbara Chandler of the Metropolitan Boston Housing Partnership, a regional housing support organization with expertise in the area of accessibility.

This report presents a thorough analysis of the complex framework of accessibility requirements which apply to the housing and related facilities covered. It then discusses and evaluates the efforts made by various entities within the City of Newton in terms of those requirements. The report concludes with a list of detailed and well considered recommendations for improvement, certain of which are highlighted in the Executive Summary section.

In January 2012, the NFHC developed the Architectural Accessibility Action Plan, which identifies priorities for action that stem from the recommendations made by this report that, if implemented, will become significant steps in eliminating impediments to fair housing choice in Newton for people with disabilities. The Action Plan organizes these priorities by identifying action steps for implementation including the role(s) of the Newton Fair Housing Committee, and by identifying and prioritizing other parties whose involvement is essential in ensuring successful implementation. If you have any questions about the report, please contact the staff person to the NFHC, Robert Muollo, Jr., at (617) 796 – 1146.

# **Ramping Up:**

Planning for a More Accessible Newton

Metropolitan Boston Housing Partnership  
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Final Version

## Acknowledgements

While the findings and opinions of this report are solely those of the author, it is important to acknowledge the contributions of the Fair Housing Committee, the Mayor's Committee for Persons with Disabilities, the Community Preservation Committee, the Planning and Development Committee, the Newton Housing Authority, and all the participating city departments. Strong appreciation is given for the contributions of the Planning and Development Department, but in particular to Trish Kenyon Guditz, Robert Muollo, Kathleen Cahill and Amy Yuhasz.

## **Disclaimer**

The purpose of this report is to provide a limited systemic review of how the City of Newton and the Newton Housing Authority procedurally manage policies, procedures and practices regarding accessibility. This report will not provide a comprehensive architectural accessibility audit, which is beyond the scope of this report. The recommendations are intended to assist the City of Newton with its goal of creating a more supportive and inclusive community for persons with disabilities and their families. These recommendations represent the opinions of the author, not necessarily those of the key informants.

### **Disability Commission and Mayor's Committee for Persons with Disabilities**

At the time of the key informant interviews, the Disability Commission had not been established. The Mayor's Committee for Persons with Disabilities was still in effect. While there is some overlap of membership between these two entities, they are to be considered separate groups. The entities are different and should not be viewed interchangeably. It was the members of Mayor's Committee on Persons with Disabilities who were interviewed. In this report, references to the defunct Mayor's Committee on Persons with Disabilities is only to be interpreted as the opinions expressed by that committee, not reflecting those of the newly formed Disability Commission.

### **Clarification of Accessibility**

When the term "accessible" is used, it refers to either the building code or federal mandate definition of compliance. It is possible that units that are functional for some persons with disabilities do not meet the compliance definition of accessibility.

### **Duplication of Subject Matter and Recommendations**

Because some of the topics covered concern more than one City of Newton department, commission and/or citizen advisory committee, it was necessary to repeat subject matter and recommendations.

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## Executive Summary

A community's vitality is dependent on the full participation of all who live there. Full participation can be achieved in a reactive manner to civil rights court decisions or regulatory mandates. A more productive way is for communities to be proactive through decisive planning and implementation.

The intent of this report is to assist the City of Newton to move toward full access for persons with disabilities and their families. The City of Newton recognizes that in order to grow as a community it needs the active participation of persons with disabilities. In order for the City to benefit from persons with disabilities, true access must be provided. This report, **Ramping Up: Planning for a More Accessible Newton**, reviews the capacity to support accessibility by the City of Newton in terms of availability of accessible units, policies, practices, services and procedures. Many of the recommendations are very explicit to the specific topics and individual City departments. However there are some recommendations that, if implemented, would significantly, positively and holistically strengthen the City's ability to be truly accessible. The recommendations highlighted in this executive summary will provide the foundation for the City to build on.

For meaningful accessibility to happen, there are key tools that need to be in place and actively utilized. The most significant and productive tool is that of a full-time city accessibility coordinator. Because the City of Newton receives state and federal funding, it is required to meet several statutory accessibility requirements, such as plans for and meaningful implementation of Sec. 504 of the Rehabilitation Act and the Americans with Disabilities Act. Also by regulation, there must be a Sec. 504/ADA officer. The City needs a skilled staff person to effectively facilitate this plan development and monitor implementation. Accessibility is not a series of activities that stand on their own, separated from the mission of a specific department. They are responsibilities that must be consistently integrated into day-to-day operations. Therefore technical assistance on accessibility is vital. A staff person experienced in accessibility and knowledgeable of the work of the City departments is the best way to provide ongoing and pragmatic technical assistance. All the City departments interviewed stated that they needed more accessibility technical assistance than they were presently able to get. The present Sec. 504/ADA coordinator is a part-time position comprising approximately a quarter of a full-time staff person in the Planning and Development Department. The quarter-time position's responsibilities include providing technical assistance, assisting in the provision of reasonable accommodation, and staffing the Disability Commission. This is insufficient time to do all that needs to be done.

The **ADA Technical Assistance** section lists recommendations regarding this issue. It outlines several key functions that this position could perform that the present Sec. 504/ADA coordinator position is unable to fulfill due to lack of available hours and, more importantly, lack of authority. The accessibility

coordinator would be responsible for developing the mandatory Sec. 504 plan that the City of Newton lacks. The accessibility coordinator would be able to bring up to date the City ADA plan, which has not happened since 1992. It is allowable to have a combined plan that includes both ADA & Sec. 504 mandates. This position would be the primary contact for technical assistance to all City departments. Additionally, the accessibility coordinator would be the point person for those persons with disabilities in need of reasonable accommodations or other types of access assistance. The Newton Disability Commission has very recently been established with expanded responsibilities. A full-time accessibility coordinator would be a valuable assist to the Disability Commission to enable it to meet its mandates. Locating the accessibility coordinator in either the Mayor's Office or the Law Department would provide the authority framework for the accessibility coordinator to enable City departments, commissions and citizen advisory committees to meet their accessibility regulatory responsibilities.

Another significant and comprehensive set of recommendations regard the mandates for Sec. 504 and ADA plans. As previously mentioned, it is mandatory due to the receipt of federal and state funds that the City of Newton has a Sec. 504 plan and ADA plan. These plans are valuable tools to identify where accessibility is achieved, barriers that need to be addressed, and the activities to remove these barriers. Aside from their nature as regulatory mandates, these plans will facilitate the ability of the City to provide meaningful access to persons with disabilities. The City of Newton has never had a Sec. 504 plan. Noncompliance with this mandate could have a negative impact on federal funding. The ADA plan was completed in 1992. It has never been updated. The majority of the key informants were not knowledgeable of the 1992 ADA report. Those who were considered it to be so outdated as to be useless for their accessibility efforts. A new Sec 504/ADA plan must be done. The recommendations in the **ADA-Sec.504 plans** section call for a model of a five-year plan with annual monitoring reports. These recommendations are vital for the City to have meaningful and effective accessibility.

It is very important that the City of Newton strive towards establishing compliance with the basic housing accessibility mandates on the state and federal levels. Therefore the recommendations outlining a new inspection model in the **Compliance with the State Access Code and Federal Mandates** section are essential towards achieving that goal. At this time, it is very difficult for the City to know whether it is getting the required number of accessible units or even the mandated level of accessibility outlined in the Fair Housing Act, Sec. 504 and the ADA without a meaningful inspection component. Both the Inspectional Services Department and the Planning and Development Department believe that adding an inspection component to housing projects that trigger compliance with federal accessibility mandates due to their receipt of government funding can be achieved without additional resources. Adopting the proposed model would allow the City to know that, first, it is getting the accessibility in housing that it funded. Second, and more importantly, this model will be significant step forward to providing accessibility to person with disabilities.



## Introduction

A community's vitality is dependent on the full participation of all who live, work, learn and play there. Full participation can be achieved in many ways. Participation is sometimes achieved in a reactive manner, through court decisions based on access protected by civil rights laws. However, communities can be proactive by achieving full participation of community members through well developed and inclusive planning.

The intent of this report is to assist the City of Newton to provide proactively full access to persons with disabilities and their families. The City of Newton recognizes that in order to grow as a community it needs the full participation of persons with disabilities. In order for the City to benefit from persons with disabilities, true access must be provided. Access is an intricate relationship between architectural and service delivery accessibility. Therefore this report will evaluate how the City presently provides this access and what can be done to improve it.

### **Background:**

The Newton Fair Housing Committee in collaboration with the Planning and Development Department commissioned an access testing audit in 2006. This audit, done by the Disability Law Center, indicated that persons with disabilities were experiencing barriers to equal access to housing opportunities. Some of the barriers identified were lack of provision of reasonable accommodation, non-allowance of reasonable modifications, lack of accessible units, and other incidences of disparate treatment. As a follow-up to the audit, the Fair Housing Committee decided to conduct a second study. This study was to review the capacity to support accessibility by the City of Newton in terms of availability of accessible units and the effectiveness of policies, practices and procedures. In 2010, the Newton Fair Housing Committee commissioned this study to "examine and evaluate the processes currently used by the City to review, approve, and monitor development, alteration or expansion, and change of use in housing, municipal buildings, streets and sidewalks, park and recreation facilities, and other structures that are used by the public with regard to compliance with applicable federal, state and local access requirements. This would involve evaluating any and all processes, procedures, policies, guidelines, and staffing, to determine their adequacy, effectiveness, and consistency within and across all appropriate City departments." (Request for Proposals Architectural Access Consultant)

The City of Newton awarded the contract for this project to Metropolitan Boston Housing Partnership (MBHP). MBHP is the state's largest regional provider of rental housing voucher assistance. The agency serves homeless, elderly, disabled, and low- and moderate-income individuals and families. Its service region spans Boston and 29 surrounding communities, including Newton. MBHP has committed to equal opportunity and access to housing for all by incorporating

fair housing principles into its services. MBHP provides trainings to both tenants and property owners regarding their rights and responsibilities under the federal Fair Housing Amendments Act of 1988, Sec. 504 of the Rehabilitation Act, the Americans with Disabilities Act and the state fair housing law, Chapter 151B. Staff members also provide technical assistance on fair housing and refer clients to other related services in Greater Boston

**Methodology:**

MBHP used several research strategies in preparing this report. In conjunction with the Planning and Development Department and the Fair Housing Committee, key informants were identified to be interviewed. MBHP interviewed City department staff, commissions, citizen advisory committees, aldermen and housing service providers. The list of key informants is listed in Appendix A. Individualized, standardized survey tools were used for each type of key informant interview. In addition, a public meeting was held to solicit opinions from the general public, service providers, advocates and other interested parties. A review of the literature included documents from several City departments, reports produced by the Fair Housing Committee, and the scanning of the city Web site. Much of the information gathered was subjected to a comparative analysis with the various state and federal accessibility, fair housing and funding mandates.

Based on the information gathered from all of the above, a section on each topic or City department was written. Each section gives a brief overview and recommendations towards improving accessibility for person with disabilities.

# **Compliance with the State Access Code and Federal Mandates**

## **Accessibility State Building Code and Federal Mandates Background**

Massachusetts accessibility code and federal mandate compliance is the foundation on which housing and other types of buildings rest. Understanding the complex interactions and sometimes contradictory technical specifications between the state code and federal mandates is difficult for architects, developers, housing providers and disability advocates. This “code confusion” creates a barrier to accessibility in Newton as well as the rest of the state. Please refer to the Scoping & Coverage Chart in the Appendix Section B.

### **Massachusetts Architectural Access Board (MAAB)**

The Massachusetts Architectural Access Board (MAAB) is the state agency responsible for promulgating and enforcing Chapter 521 CMR. Chapter 521 CMR is a specialty code dealing with accessibility within the MA state building code. It establishes scoping and coverage regulations as well as the technical specifications for accessibility in housing and public accommodation buildings. It covers new construction and rehabilitation. Local code inspectors, such as the Newton Inspectional Services Department (ISD) must inspect for compliance with Chapter 521 CMR. ISD can pull a permit or refuse to issue an occupancy permit if there is noncompliance with Chapter 521 CMR. Additionally, local citizens who believe that there is a violation of the state accessibility code can file a complaint directly with MAAB.

### **Massachusetts Chapter 151B**

MA Chapter 151B is the state civil rights law that relates directly to equal access to housing opportunity for all the protected classes including person with disabilities. Chapter 151B mandates accessibility in new construction of housing with 3 units or more, first occupied after March 13, 1991. It incorporates the seven design and construction requirements of the federal Fair Housing Amendments Act of 1991.

### **Federal Access Mandates**

On the federal level, there are four accessibility mandates that regulate housing and/or public accommodation buildings. Some cover only new construction. Some cover rehabilitation as well. They do not all share the same scoping & coverage requirements. They do not all share the same technical specifications. Newton ISD does not inspect for compliance on the federal mandates. Investigations are triggered by individuals or organizations filing complaints or when a federal agency such as the Department of Justice (DOJ) or the Department of Housing and Urban Development (HUD) chooses to audit.

### **Architectural Barrier Act of 1968**

The Architectural Barrier Act of 1968 covers buildings that were constructed on behalf of the federal government. This covers all buildings including housing that was financed totally or partially by the federal government either through a grant

or a loan. Public housing such as the federally funded developments at the Newton Housing Authority would fall into this category. Architects, developers and builders of developments covered by the ABA must use the Uniform Accessibility Standards (UFAS) as the accessibility standard. The UFAS is promulgated by the United States Access Board.

#### **Section 504 of the Rehabilitation Act of 1973**

Section 504 of the Rehabilitation Act of 1973 covers housing, public buildings and public accommodation buildings that receive direct federal funding. This would include Community Development Block Grants (CDBG) and HOME funds. Housing that is funded through HUD, the U.S. Department of Agriculture (USDA) and the U.S. Department of Education (DOE) is governed by Sec. 504. This would include funding for rural housing and dormitories, as well as both private and public housing. It covers new construction, rehabilitation and/or conversions. It uses UFAS as its technical specification standard. Complaints are filed with the federal funding agency. The federal funding agency also can choose to audit a funded project for accessibility compliance. With respect to the City's federally funded housing programs, including programs administered by the Planning and Development Department and the Newton Housing Authority, it is anticipated that the U.S. Department of Housing and Urban Development soon will adopt revised technical specifications and scoping & coverage standards.

#### **Fair Housing Accessibility Act (FHAA) of 1988**

The Fair Housing Amendments Act (FHAA) of 1988 covers new construction of housing that has four or more units, first occupied after 3/13/91. The FHAA covers housing regardless of funding source. It covers luxury, market-rate, affordable and low-income housing. It does not cover rehabilitation or change of use of existing buildings. HUD promulgates regulations for the FHAA but it allows the use of approved Safe Harbors. There are presently 10 Safe Harbors approved by HUD. Some of the Safe Harbors have been developed by HUD, although most have been developed by trade organizations such as the International Code Council (ICC) and American National Standards Institute (ANSI). As is true of the other federal accessibility mandates, it is a complaint-driven system. HUD and/or DOJ respond(s) to complaints filed by individuals or organizations. These federal agencies also can choose to do an audit. In addition, individuals have a separate right to litigate in court.

#### **Americans with Disabilities Act (ADA)**

The Americans with Disabilities Act (ADA) Title I covers employers of 15 or more employees. The threshold of 15 is for all employees of an entity, not by department or site. It prohibits discriminatory employment practices based on disability in advertising, hiring and supervision. It also includes a provision regarding reasonable accommodations, and there are mandates regarding the physical accessibility of the workplace. The ADA Accessibility Guidelines (ADAAG) or the UFAS are the accessibility standards that can be used for compliance.

The (ADA) Title II covers housing, public buildings and public accommodation buildings that directly receive municipal, county or state funding. It covers both new construction and rehabilitation. New construction or rehabilitation projects prior to March of 2012 can use either the UFAS or the ADA Accessibility Guidelines (ADAAG) of 1991. New construction or rehabilitations done after March 2012 must use the new guidelines recently released by the DOJ. Complaints can be filed directly with DOJ.

ADA Title III covers public accommodations such as government buildings, recreational facilities, schools, etc. If a housing development has a public accommodation, such as a manager's office, leasing office, etc., that feature would be covered under ADA Title III. New construction or rehabilitation projects prior to March of 2012 can use either the UFAS or the ADA Accessibility Guidelines (ADAAG) of 1991. New construction or rehabilitations done after March 2012 must use the new guidelines recently released by the DOJ. Complaints can be filed directly with DOJ. The DOJ has just released for comment proposed rulemaking for Web site accessibility. Once that process is complete, Web sites such as the City of Newton's must be fully compliant with ADA Title III. Complaints can be filed directly with DOJ.

### **The role of Newton Inspectional Services Department (ISD)**

As stated above, Newton Inspectional Services Department (ISD) is responsible for inspection and enforcement of the Massachusetts Architectural Access Board (MAAB) Chapter 521 CMR regulations, a subset of the state building code. ISD issues permits, reviews plans and conducts on-site inspections. In issues of noncompliance, ISD does not issue permits. It can pull permits on projects at any stage of the building process due to non-compliance. ISD reports that when they need outside technical assistance in either the interpretation and/or implementation of a specific regulation, ISD directly contacts the MAAB. On occasion, ISD will contact a private architect who sits on the MAAB for assistance. While ISD believes that this has worked well, ISD is interested in exploring a more comprehensive system for technical assistance for their day-to-day inspectional operations.

All inspectors have been trained in understanding and enforcing the MAAB accessibility requirements. ISD reported that training is always an ongoing need for them. Additionally, ISD stated that field demonstration training would be beneficial to the department inspectors. Field demonstration training is a hands-on demonstration of why a particular accessibility code requirement is necessary. For example, to demonstrate the importance of the proper slope, inspectors maneuver a wheelchair up compliant and noncompliant ramps. This allows the inspector to understand experientially why a slight change in slope can present a serious barrier to access.

Only federal agencies can do enforcement of the ABA, ADA and Sec. 504 accessibility mandates. The only exception is under FHAA: HUD does authorize

the Fair Housing Assistance Programs to do investigation and enforcement of the FHAA design and construction requirements. ISD is neither a federal agency nor a FHAP, therefore it is not responsible for inspection and enforcement of the federal accessibility mandates. This would include the Architectural Barrier Act, Fair Housing Amendments Act of 1988, Sec. 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990. ISD also does not enforce the accessibility requirements of Massachusetts' civil anti-discrimination law, Chapter 151B. All of these mandates operate as complaint-driven systems. Dissimilar to MA state building code, there are no permits issued or on-site inspection visits under these authorities. Only if a complaint is filed alleging a design and construction violation, or if HUD, DOJ or MCAD initiates an audit as a joint finding, is an inspection done in the case of Chapter 151B. If a probable cause finding regarding design and construction is determined, a hearing is held. At the hearing a finding of violation can be determined and a correction plan decided upon.

When the City of Newton provides municipal funds or administers funds on behalf of the federal and/or state government, any or some combination of the above-mentioned federal laws will be triggered. Because it is a complaint-driven system, the City presently does not have any way to determine if the funded projects are compliant with the federal accessibility mandates. It also means that the City is not able to determine how many accessible housing units were built with its funds.

Key informants interviewed in both ISD and in the Planning and Development Department reported a willingness to work together cooperatively and creatively to address the issue of lack of federal compliance oversight. Based on the opinions expressed, a basic concept was developed. ISD has one inspector who is trained in what ISD refers to as "special projects." These special projects include public buildings and public works. It is proposed that this individual could be trained to do inspections of those housing projects funded by the City of Newton that trigger federal accessibility requirements. This would be strictly inspection services; it would not include enforcement because ISD still would lack the authority to do so. The Planning and Development Department would notify ISD of those housing projects that trigger any of the federal accessibility mandates once a scoping & coverage analysis is done using their review tool (Appendix C). The inspector then would do an inspection based on the specific federal design & construction requirements. Once the inspection is done, the inspector informs the Planning and Development Department of compliance or identifies noncompliance issues. The Planning Department then works with the funded project to remedy the identified issues of noncompliance in an appropriate manner. Both ISD and the Planning Department report that this proposal could be accomplished without the need for additional financial resources. For this proposal to function effectively, designated staff in both departments would need to be trained on the federal accessibility mandates.

ISD has met annually with the Mayor's Committee for Person with Disabilities (Mayor's Committee). The purpose of these meetings has been to identify accessibility issue trends. The Mayor's Committee reported that their members often receive complaints from constituents regarding accessibility problems or needs. Recently, the Mayor's Committee and ISD agreed to meet regularly to discuss these types of alleged violations. Once the newly instituted Disability Commission is fully operational, this joint meeting will begin. Developing a direct referral relationship with ISD would create an organized approach to both reporting and correcting accessibility code violations.

One issue identified by ISD as problematic is the number of complaints that they receive from the general public regarding perceived accessibility violations. While ISD does review such complaints, ISD reported that the large majority of such complaints are not valid. ISD supports training for the general community of Newton on what is and is not covered by Chapter 521 CMR. ISD supports the Community Monitor Training that MA Office of Disability (MOD) offers but ISD thinks this training is not appropriate for individuals who are interested in accessibility but do not want to assume the responsibility of compliance monitoring.

## **Recommendations**

1. Provide field demonstration training to all inspectors as well as other City staff who would benefit from such training. This could include the designated Planning and Development Department staff, the accessibility coordinator, the Fair Housing Committee, the Disability Commission, Veteran's Services, Public Buildings, the School Department, the Parks & Recreation Department, and the Human Rights Commission.
2. Authorize ISD to inspect projects funded by the City through municipal, state or federal funds, such as Community Preservation Act (CPA), Community Development Block Grant (CDBG) and/or HOME that are administered by the City. Such authority would include only inspection - not the enforcement of federal mandates. Local enforcement responsibilities still would be that of the appropriate federal agency. ISD reports that it can accomplish this using their present staffing levels by specifically assigning this to the specialist inspector.
3. Develop a notification system by which the Planning and Development Department, after doing the scoping & coverage analysis, would inform ISD of projects that are being funded by the City and that trigger federal mandates. After the above-described inspection happens, ISD then would formally notify the appropriate department of the project compliance status. It is important to remember that ISD would not have the authority to deny a permit or pull a permit due to noncompliance

with federal accessibility mandates. ISD authority extends only to compliance with the rules of the Massachusetts Architectural Access Board.

4. In circumstances of noncompliance, the city department funding the project will notify the project of its noncompliance. A correction plan then will be developed and implemented. A correction plan could result in financial consequences in accordance with required procedures. ISD will notify the appropriate department on the status of the corrections/retrofitting done to achieve compliance.
5. To implement the proposal of inspection for federal accessibility, training on these technical specifications as well scoping & coverage mandates must be provided to ISD. This training also could be offered to designated Planning and Development Department staff and the accessibility coordinator to facilitate the process of implementing the recommended federal inspection concept. Such training should be provided by an experienced access consultant and/or architect.
6. A more generalized training of the federal accessibility technical specifications as well as scoping & coverage mandates should be provided to other City Departments that fund projects with municipal, state or federal funding.
7. The Disability Commission, the Fair Housing Committee and the Human Rights Commission should report directly to ISD any possible accessibility violations that they are made aware of. ISD should report back to the appropriate committee the outcome of the identified accessibility matter.



## Availability of Accessible Units

The City of Newton, located 6 miles west of Boston, was first established in 1630. According to U.S. Census Bureau 2000 housing demographics, 55.5 percent of the housing units are single-unit detached homes and 21.2 percent of the housing stock has three-plus units. Again from the 2000 Census, approximately 96.5 percent of the housing units were built prior to 1991. Housing of three-plus units constructed for first occupancy after 3/13/91 must comply with Chapter 151B and, if first occupied after 9/96 and have 3 units or more must have some level of compliance with the Massachusetts Architectural Access Board code. If four-plus units were first occupied after 3/13/91, then those units would need to be compliant with the accessibility requirements of the Fair Housing Amendments Act of 1988. These statistics indicate that overwhelmingly the housing stock in Newton would not be required to be accessible for persons with disabilities. In the "FY11-15 Analysis of Impediments to Fair Housing Choice," the City of Newton is described as "dense and built out." Built out means little to no available land to build on, particularly the types of multifamily housing that would trigger accessibility requirements. These factors combined present the City of Newton with a significant dilemma when meeting the housing needs of persons with disabilities.

A majority of the key informants interviewed wanted to know how many accessible units exist in the City of Newton or in housing funded by the City. The companion question was: How many accessible units does the city need? While the questions are straightforward, the answers are not. At the time of preparing this report, there is no absolute answer or reliable estimate on how many accessible units are in Newton. A survey done in 2010 by the City of Newton Planning Department as to how many accessible units were provided in various projects that had been funded through the City was inconclusive. The survey was designed in a manner that would identify how many units were covered by Massachusetts Architectural Access Board (MAAB) Group 1 and Group 2, Fair Housing Amendments Act of 1988 (FHAA), Sec. 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities (ADA) Title II. Because all of these use different scoping & coverage and technical specifications, the units had to be identified separately, even though one unit/building may be covered by one or more of these laws/codes. The Planning and Development Department staff working on this survey reported that housing providers were unfamiliar with the different types of accessible units and therefore could not provide meaningful data. The typical anecdotal response was that 5 percent of their units were accessible. Based on the date of first occupancy, the number of units in the building/development and the presence/lack of a common-use elevator, the response of 5 percent would on the surface appear to be noncompliant.

It was decided to explore this situation further through more detailed discussions with private housing providers and the Newton Public Housing Authority (NHA). The private housing providers were selected by the Planning and Development Department. All had at some time received some assistance from the City of

Newton, whether through zoning relief or funding. The housing providers who agreed to participate with this report were asked to identify the number of accessible units in their buildings and/or developments. Similar to the earlier Planning and Development Department survey, they indicated that 5 percent of their units were accessible. In addition to the interviews, a Web search was done of other housing providers in the Newton area for their specific number of accessible units. Many Web sites did not list any accessible units. Some Web sites listed 5 percent. The NHA submitted two letters from its architect that identified level of accessibility on some of its developments but not all. Therefore at this time, this report can not comment on NHA accessibility scoping & coverage compliance. The NHA is discussed in greater detail in another section.

While all of the above-noted interviews and Web searches did produce interesting information, the results should not be considered as statistically conclusive. Standard research and statistical sampling protocols were not followed. Therefore the best that can be assumed is that this gathered information may be possible indications of a trend.

In all of these housing developments, based on the total number of units, presence of a common-use elevator, date of first occupancy, and funding sources, the number of accessible units should have been much greater. For example, in new construction of a 100-unit multifamily building with a common-use elevator, first constructed after 3/13/91, all the units must be accessible as defined by the FHAA. Under MAAB, if the same building was new construction after 1996, 95 percent of the units should have been accessible as Group 1 and the other 5 percent accessible as Group 2. If there was federal funding, then under Sec. 504., 5 percent should have been accessible for persons with mobility disabilities and an additional 2 percent for persons with vision and/or hearing loss as defined by UFAS. State or local funding would have triggered ADA Title II, which has the same scoping & coverage as Sec. 504.

It is important not to conclude that the buildings discussed in the interviews are noncompliant. The interviews allowed flexibility to discuss these issues at length with the housing providers' on-site staff. In all cases, except for the NHA, housing providers researched the issue further and were able to report back compliant numbers of accessible units. The indications are that while a building's architect and/or the original developer were aware of the actual number of accessible units, the on-site staff were not as well informed.

This lack of awareness has serious implications on availability of accessible units for persons with disabilities and their families. If on-site staff do not have accurate numbers, there are negative impacts on lotteries, wait lists and marketing. If on-site staff are only aware of 5 percent as being accessible, they are only marketing 5 percent. This creates a much longer wait list for persons with disabilities. It also reduces the number of accessible units that are listed on Mass Access. Mass Access is the state-funded database of accessible units statewide. Owners of rental housing with accessible units are required by Chapter 151B to register their

units with Mass Access. Mass Access is a valuable search tool for persons with disabilities trying to locate accessible housing. If only 5 percent is listed, then persons with disabilities are unaware of, in some cases, the other 95 percent of accessible units in the larger developments.

There indeed may be a shortage of the minimum number of accessible units as required by state and federal codes/mandates. The situation of “code confusion” may result in a loss of accessible units. Code confusion is when the state access code promulgated by MAAB and the federal accessibility mandates do not agree. Please see Appendix B for comparison of state and federal scoping & coverage. MAAB does have some technical specifications that are equal to or exceed the federal mandates. However, as detailed in the Citizens Housing and Planning Association (CHAPA) Evaluation and Comparison of State and Federal Accessibility Codes report, 48 MAAB technical specifications were identified as being less accessible than the federal mandates. One example concerns accessible parking spaces. Under MAAB, accessible parking is only required in parking lots of 15 spaces or more FHAA mandates that a minimum of 2% but not less than 1 of the parking spaces serving the accessible units must be accessible. There also is a significant gap between the scoping and coverage of FHAA, which covered first occupancy of multifamily housing after 3/13/91, and that of MAAB, which covers first occupancy after 1996. The Newton Inspectional Service Department (ISD) is presently only authorized to inspect for compliance with MAAB. This means that between the FHAA 3/13/91 and MAAB first occupancy of 1995, there was no inspection for accessible housing units happening in Massachusetts. There is no pragmatic way to backtrack to determine if in this five-year gap whether Newton got the minimum number of accessible units under FHAA.

The typical style and age of housing as well as the available land to build new construction can impact the number of available accessible units. Housing built prior to the passage of the federal and state accessibility mandates in most cases is not accessible. Such housing only reaches some level of accessibility depending on the degree and cost of a later rehabilitation. A conversion of use from non-housing to a housing project may result only in limited accessibility. Housing with fewer than three units will not trigger any accessibility requirements. New construction of multifamily buildings without common-use elevators are mandated only to provide accessibility for the ground-level units. When there is limited land to do new construction of larger multifamily projects, the end result is a smaller number of accessible units. All or the factors described pertain to Newton.

Some key informants were concerned with the preference for multilevel townhouse developments or for other housing styles that were considered in keeping with the character of Newton, such as detached single-family homes. These key informants contend that such efforts may have a negative impact on creating accessible units because these types of housing do not trigger

accessibility mandates. A disparate impact may result if preferences for specific styles of housing that would not trigger accessibility become prevalent.

An assessment of the need for accessible housing in Newton could be carried out using several sources of information, including (for example) 2009 American Community Survey data, HUD's State of the City Data System, an examination of waiting lists for public and assisted housing in the City and surrounding communities, and surveys of service providers and developers. Such an assessment, which might explore the need for accessible housing based on income and demand for type of housing, is beyond the scope of this report. However, the City is required by HUD consolidated planning regulations to examine the housing needs of people with disabilities, and the Consolidated Plan and the Analysis of Impediments to Fair Housing Choice can be appropriate venues in which to assess the need for accessible units. In addition, Section 504 and ADA regulations require Newton to periodically engage in a self-evaluation to determine if there are barriers to equal participation affecting people with disabilities in the City's programs and activities. The self-evaluation is another mechanism that can be used to examine the question.

#### **Recommendations:**

1. The Newton Planning and Development Department, in negotiating funding, should provide self-reporting documents for housing providers that identify how many accessible units will be provided under MAAB Group 1 & 2, FHAA, Sec. 504, and ADA Title II & II. Such documentation also should identify whether the developer is planning on asking for a waiver of accessibility from MAAB. The MA Department of Housing and Community Development (DHCD) uses a similar documentation process in its tax credit awarding process. The DHCD documentation could be adapted for the City of Newton.
2. The Newton Planning and Development Department should require that housing providers in their submitted Fair Housing Marketing Plans provide an accurate number of accessible units, their specific outreach efforts to elder/disability service provider & advocates, placement of advertisements in media that reaches these populations, and proof of listings in Mass Access.
3. The Newton Planning and Development Department should require that housing providers who received city funding demonstrate policies and procedures that will ensure that on-site staff have the correct number of accessible units as well as instructions on how those numbers are to be used for marketing, lotteries and wait list management.
4. The Newton Planning and Development Department should periodically survey housing providers to determine whether accurate

numbers of accessible units are being used by on-site staff.

5. The Fair Housing Committee in collaboration with joint effort between the Human Rights Commission, and the Disability Commission should periodically test whether information being provided to persons with disabilities and elders in need of accessible housing is accurate.
6. The City should conduct an assessment of the need for accessible housing, the results of which should be used to carry out the Accessibility in Affordable Housing Guidance. The assessment should take into account the need among people with disabilities with mobility and sensory impairments, should consider need based on income and the need for affordable housing, and should also consider relative need for accessible rental and home ownership housing. The platform for conducting this assessment should include the consolidated plan (and any annual action plan), an update to the Analysis of Impediments to Fair Housing Choice, and the City's Section 504 and ADA self-evaluation.
7. In any land use planning or master plan development, special attention should be paid to whether decisions made will have a negative, disparate impact on the development of accessible housing units.
8. The City of Newton should participate with the CHAPA Access Committee to develop a workable plan to address code confusion issues between state and federal codes.
9. In negotiations concerning what style of housing is most appropriate to maintain the character of Newton, special attention should be paid to whether this will create a negative, disparate impact on the creation of accessible housing for persons with disabilities.

## **Accessibility in Affordable Housing Guidance:**

As mentioned elsewhere in this report, code compliance can be difficult due to the lack of agreement between the state accessibility code and the federal mandates of the Fair Housing Amendments Act, Sec. 504 and the Americans with Disabilities Act. One area of complexity is the scoping & coverage, which is the determination of what code/mandate is triggered and to what degree. Even when done correctly, this still does not mean that all new construction, rehabilitation or modifications in housing will trigger accessibility. For example HUD lacks clear Sec. 504 rules that define architectural access requirements for home ownership units funded with federal assistance. Multifamily buildings under three units are not covered by the MA Architect Access Board code. The City of Newton believes that accessibility is a best practice for use of its limited housing funding but it is a key component to building an inclusive community. That is why the present administration undertook the development of guidance for providing accessibility in affordable housing when none were required by law or regulation.

The purpose of this section is to provide recommendations to increase the effectiveness of implementation. The new Guidance establishes a process that will work toward building in some level of accessibility in projects funded or administered by the City. This would include such funding sources as Community Development Block Grant, HOME, and Community Preservation Act. Its mission is to expand the availability of affordable, accessible housing for persons with disabilities and elders. It establishes a Development Review Team (DTR) that will advise applicants for City funding on how to achieve accessibility through site and structural features. The DTR is composed of representatives from the relevant City departments as well as a representative from the Disability Commission. The full Guidance is available in Appendix D.

The City of Newton should consider the incorporation of three different concepts for implementation of the Guidance. The first concept that will be discussed here is the application of the state access code/federal mandates to projects that do not trigger compliance of such codes or mandates principles. Additionally universal design and/or visitability are design principles that could easily facilitate fulfilling the tenets of the Guidance. These concepts were formulated to address the built environment in a manner very different than access building codes and mandates.

One concept that should be in consideration for implementation of the Guidance is the application of the MAAB, FHAA, Sec. 504, or ADA specifications to units that are not covered. For example, new construction of a duplex would not trigger any of these because there are only two units. The duplex is therefore not required to be accessible. If such a project was to be funded through the City of Newton, it would be possible under the Guidance to advise that either MAAB, FHAA, Sec. 504, or ADA technical specifications be used. While this may appear to be the most direct manner in which to achieve voluntary accessibility, it may not be the most effective. Small projects present design challenges that are quite

different than that of larger projects. The difficulty is often connected to the site. It is not just the unit or a building that need to be accessible but the site as well. For example, because a smaller project would most likely have a very small footprint, there would be limited space in which to provide off-street accessible parking. In a project with only one or two parking spaces, what would be the proper formula for determining the percentage of accessible spaces? Using the MAAB or the FHAA formulas, with their requirements to always round up, it would mean that all parking spaces would be accessible. If there was a resident in the duplex who was not disabled, they would not be able to park at their own unit. Application of access code/mandates to non-covered units can be a good strategy but must be approached cautiously.

Universal design is seven principles whose purpose is to have the built environment function well for everyone. The philosophy of universal design is not restricted to just persons with disabilities. It encompasses the functional design needs of elders wishing to age in place, families raising children, persons working out of their homes, etc.

The term universal design and its seven principles were developed by Ron Mace. Ron Mace was a wheelchair-user, but equally important he was an architect. Through both his personal and professional experiences, he realized the limitations of code-mandated accessibility. He also was concerned with the limitations that the built environment places on all of us. To that end he developed the seven principles of universal design listed below:

1. **Equitable Use:** The design does not disadvantage or stigmatize any group of users.
2. **Flexibility in Use:** The design accommodates a wide range of individual preferences and abilities.
3. **Simple, Intuitive Use:** Use of the design is easy to understand, regardless of the user's experience, knowledge, language skills or current concentration level.
4. **Perceptible Information:** The design communicates necessary information effectively to the user, regardless of ambient conditions or the user's sensory abilities.
5. **Tolerance for Error:** The design minimizes hazards and the adverse consequences of accidental or unintended actions.
6. **Low Physical Effort:** The design can be used efficiently and comfortably, and with a minimum of fatigue.
7. **Size and Space for Approach & Use:** Appropriate size and space is provided for approach, reach, manipulation, and use, regardless of the user's body size, posture, or mobility.

These principles are not scoping & coverage requirements or technical specifications such as the MA Architectural Access Board regulations or the federal mandates. They provide a sense of direction to approach design from a more functional perspective. That allows users a high level of flexibility to design

functionality. It has also allowed local government to incorporate the universal design principles in a way that best suits their communities.

The State of Kentucky mandated universal design for housing projects that received 40 percent or more of its funding from its state Housing Finance Agency. These projects for the most part were detached, single-family homes. This particular type of housing does not trigger state or federal accessibility code mandates. Kentucky developed a menu of technical specifications based on universal design principles. Some of these specifications were the obvious features such as wider doorways, zero-grade entrances, lever hardware, wide paths of travel, etc. Some are more unique, such as cable readiness and electrical system specifications to meet increased demands by computer-controlled environments for persons with disabilities and for individuals with home offices. Universal design principles can be used in multifamily developments, duplexes and single-family detached homes.

Visitability is a design concept very different from accessibility codes/mandates and universal design. Eleanor A. Smith, founder of Concrete Change, first began to promote visitability in the 1980s. Her vision is the creation of welcoming, meaningfully integrated communities for person with disabilities. She noticed that while access codes produced housing units that would function well for persons with disabilities; the codes did not provide a built environment that allowed persons with disabilities to move freely within their buildings, developments and neighborhoods. Persons with disabilities were limited to their accessible units because they were unable to visit their neighbors who resided in non-accessible units. This type of situation presents a significant barrier to socializing for persons with disabilities and increases their isolation. It is integration in appearance, not in reality.

The principle of vistability is to incorporate some minimal accessible features into units that are not mandated otherwise to be accessible. These features, as outlined by Concrete Change, are wider doorways/paths of travel, zero-low thresholds, and an accessible bathroom or half bath. Visitability features have been used in detached single-family, duplex and non-covered units in multifamily buildings units quite successfully. When vistability is incorporated, it does promote opportunities for persons with and without disabilities to socialize. It makes integration a reality, not an appearance.

Visitability is a growing trend throughout the United States. Concrete Change has successfully advocated with local and state governments to incorporate visitability into their housing mandates. Some have mandated it as a condition of receiving government funding. A few municipalities have used it as a part of their building code. In some communities, visitability has been applied only for detached single-family units or duplexes. Others have used it for multifamily buildings. Vistability could be a valuable tool for communities, such as the City of Newton, that have a significant stock of single-family homes.



## Recommendations:

1. At this time, the City of Newton should maintain flexibility in applying the Guidance in a case-by-case manner. The City should maintain detailed records of how the Guidance was applied plus the degree of accessibility that was achieved by the individual projects. This will assist the City to determine best practices that could be easily replicated in other projects.
2. Once best practices have been determined, the City should update its Guidance to further support such practices by providing examples of best practices as part of the funding process.
3. Members of the Design Review team, Inspectional Services Department, Planning and Development Department, Fair Housing Committee, and the Disability Commission should all receive training on universal design and visitability concepts.
4. In conjunction with the Boston Society of Architects, the City could provide builders, developers, design professionals and housing providers plus housing and disability advocates training on the Guidance, universal design and visitability.
5. Information regarding universal design and visitability should be available in the Newton public and school libraries so all community members can better understand and embrace these design concepts.

## Reasonable Accommodation and Reasonable Modification:

While a great deal of this report has focused on physical accessibility in housing, it is equally important to review other accessibility provisions as well. The Massachusetts Chapter 151B (state anti-discrimination law), Fair Housing Amendments Act, Sec. 504 of the Rehabilitation Act, and the Americans with Disabilities Act all have provisions for reasonable accommodation and/or reasonable modification. These provisions are key to customizing housing situations to enable greater accessibility for individuals with disabilities.

A reasonable accommodation is a change or waiver to a policy, practice, procedure or service to allow equal access to housing opportunity for a person with a disability or someone associated with someone with a disability. There must be a nexus between the person's disability and the reasonable accommodation request. No costs associated with the reasonable accommodation can be assigned to the person making the request. Common examples are allowing an assistive animal in a "no pets building," changing rent payment dates for persons receiving government assistance, or designating parking spaces for a person with a disability. A reasonable accommodation request can be denied if it causes an undue financial and administrative burden or would result in a fundamental change to the basic nature of the housing program. All housing providers interviewed were knowledgeable of the reasonable accommodation provision as outlined in this paragraph.

A reasonable modification is a physical alteration of the premises to allow greater use and accessibility of the premises by a person with a disability. A reasonable modification can be requested for alterations to the unit of the resident with a disability and/or to common-use areas. Examples of a reasonable modification can be the installation of grab bars in the bathroom, building of a ramp to an entrance or provision of an air filtration system. Reasonable modification requests can be denied for reasons of structural infeasibility, and in limited cases, cost. Under the FHAA, the person making the reasonable modification request assumes the cost. Sec. 504 and the ADA assign the cost to the housing provider. MA Chapter 151B uses a different approach. Under Chapter 151B, if there are 10 contiguous units or more, or if the housing provider receives direct government assistance, then the housing provider assumes all costs. If the housing does not fall into either category, then the person making the reasonable modification request assumes the cost. All private housing providers interviewed were aware of the reasonable modification provision.

In reviewing the reasonable accommodation and reasonable modification policies and practices of the interviewed private housing providers and in a review of the Web sites of other private housing providers in Newton, several issues became apparent. The reasonable accommodation/reasonable modification process is intended to be a highly interactive and flexible process. The person with the disability is required only to provide the minimal information regarding his/her

disability that is necessary to this process. That concept also is extended to the provision of the documentation of disability.

The best standards of how the reasonable accommodation and reasonable modification process works are the Joint Statements prepared by the Department of Housing and Urban Development and the Department of Justice (see Appendices E&F.) The Joint Statements describe what can and cannot be asked. They also clearly outline allowable procedures to be used. For the purposes of this report, the Joint Statements were used as the comparative measure of housing providers in the City of Newton.

The Joint Statements are clear that a reasonable accommodation/reasonable modification can be made verbally or in writing at the discretion of the person with a disability. Housing providers can develop their own forms for such requests but they can not mandate that the person with disability use them. Some housing providers were clear on this and incorporated it into their internal procedures. Some would only consider such request if it is was done in writing or using their internal forms exclusively.

There were inconsistencies of practice regarding documentation of disability among the housing providers. The Joint Statements are clear on this issue as well. If the disability is apparent or is known to the housing provider, documentation should not be requested. If the disability is not apparent or is unknown, then health care provider documentation can be requested. Housing providers cannot require that documentation indicate the nature or the severity of the disability. Housing providers can develop their own internal forms for health care provider documentation but can not mandate that persons making requests use it. Housing providers cannot require that the documentation be on letterhead or a prescription pad. Housing providers cannot restrict which type of health care provider can submit documentation. It can be a primary care physician, specialist, nurse practitioners, nurse, counselor, social worker, etc.

Through the interviews and Web site reviews, it was apparent that documentation of disability was not commonly done in a manner consistent with the Joint Statements. Some housing providers insist that only their forms be used or that it must be on the health care provider's letterhead. Some housing providers only accept documentation from physicians. Some ask for more detailed information that would disclose the nature and the severity of the disability.

Many housing providers ask for authorization from the person with disability to contact their health care provider directly by telephone. While this practice is not directly addressed in the Joint Statements, it can be a questionable practice if it results in discussions regarding the nature or the severity of the disability. Medical information is of the most personal and confidential nature. There is the possibility that allowing housing providers to directly contact health care providers in such a manner could violate the persons with a disability right to confidentiality. It also could be viewed as possible harassment by the person with disability

because the housing provider is asking the health care provider for information regarding the nature and severity of the disability. A better approach is to directly contact the person with a disability if his/her health care provider did not submit proper documentation. It is then the disabled person's responsibility to contact his/her health care provider to rectify the situation.

**Recommendations:**

1. The Planning and Development Department should establish reasonable accommodation and reasonable modification principles consistent with the Joint Statements or use the Joint Statements as a measure of compliant policies and procedures for those parties seeking or receiving funds from the City.
2. The Planning and Development Department should mandate that all housing providers requesting or receiving city funds provide their reasonable accommodation and reasonable modification policies and procedures for review.
3. Housing providers who do not meet the City's reasonable accommodation/reasonable modification principles should amend their policies and procedures before funding is released.
4. The Planning and Development Department should request that all housing providers requesting or receiving city funds provide their reasonable accommodation and reasonable modification policies and procedures online when possible.
5. The Fair Housing Committee, the Disability Commission, and the Planning and Development Department in conjunction with experts on these provisions should provide training to housing providers, advocates, service providers, persons with disabilities and elders.
6. The HUD-DOJ Joint statements should be made available on the Fair Housing Committee's Web site.

## **Americans with Disabilities Act - Sec 504 of the Rehabilitation Act Plans**

The City of Newton is a direct recipient of federal funding such as the Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) and HOME, therefore the City is required to have a Sec. 504 plan. Sec. 504 of the Rehabilitation Act of 1973 mandates accessibility for both physical structures and service delivery of those entities directly receiving federal funds. In 1988, HUD directed such entities to develop Sec. 504 transition plans. The Sec. 504 transition plan identifies areas of accessibility compliance and noncompliance. Corrective action steps are then identified to address areas of noncompliance. In addition, a Sec. 504 officer is required. The Sec. 504 officer oversees implementation and updating of the transition plan.

The Americans with Disabilities Act Title I covers employers of 15-plus employees. Title I prohibits discrimination in all employment-related transactions, such as application, hiring, compensation, etc. Under Title II, state and local governments must serve persons with disabilities in an accessible manner. Title III of the ADA requires that public accommodations be made accessible for persons with disabilities. Recreational facilities, public buildings and communications are all examples of public accommodations. The City of Newton is required to have an ADA plan and an ADA officer.

Although these laws are different and have differing regulations, it is allowable to have the same staff person serve as the Sec. 504 officer and the ADA officer. It is also allowable to have one plan that addresses both the Sec. 504 and ADA compliance mandates as long as both laws are fully addressed. This is common practice in many municipalities and housing authorities. While the City of Newton is required to have a Sec. 504 plan, it presently does not have one. The City of Newton did an ADA plan in 1992, although the plan has never been updated.

Originally, the City did not have a Sec. 504 officer but did have an ADA officer (the ADA coordinator). As the result of a voluntary compliance agreement that the City of Newton signed with HUD, the ADA officer position was expanded to include Sec. 504 responsibilities. Many of those interviewed reported that they have contacted this staff person for technical assistance. Additionally, the ADA coordinator is the designated person to receive reasonable accommodation requests for public meetings. That information is provided on all official postings for meetings, City Hall bulletin boards and the City Web site.

Sec. 504 and ADA plans can be a useful tool to meeting the accessibility needs of persons with disabilities and their families who work, live and play in a community. Sec. 504 and ADA plans should be fluid planning documents that give direction, note progress and adjust as the needs of the community change. Municipalities should have a consistent methodology on when, how and by whom the Sec. 504 and ADA plan will be managed and updated. The focus should not be solely on issues of physical accessibility but should include service delivery, reasonable accommodation and communication.

The Department of Justice and HUD can request copies of the Sec. 504 and/or ADA plans for audit or investigatory purposes. Factors such as regulatory compliance, identified goals, monitoring and implementation, and currency of the plan are taken under consideration. Plans or implementation activities that do not address noncompliance or fail to create meaningful accessibility for persons with disabilities can impact receipt of federal funds, result in fines, and/or mandate costly correction plans.

In terms of its ADA planning, the City of Newton should consider participating in Project Civic Access. This is a Department of Justice (DOJ) initiative that allows municipalities to voluntarily take a proactive approach to correcting ADA deficiencies with no penalty towards itself. In Massachusetts, the cities of Swansea, Brookline and Springfield, plus Barnstable County, participated in Project Civic Access. Project Civic Access does result in meaningful ADA planning and progress for these communities. DOJ also provides the “ADA Best Practices Tool Kit for State and Local Governments,” a useful guide toward implementation. Further information on Project Civic Access as well as reports on how other municipalities participated in the Project can be found on the DOJ ADA Web site [www.ada.gov/civicac.htm](http://www.ada.gov/civicac.htm).

#### **Recommendations:**

1. The City of Newton should initiate a new planning process to both update its ADA plan as well as incorporate Sec. 504 requirements. This ADA/Sec. 504 planning process must encompass all city departments and activities. Because of the lack of a Sec. 504 plan and that the original ADA plan needs to be updated, the City should consider hiring an outside consultant to create these plans as a baseline. Such a consultant must know not only about physical accessibility but also about accessibility regarding service delivery, communication and staffing. An alternative to hiring an outside consultant would be using the FTE accessibility coordinator to do this type of planning. This planning should be done in collaboration with Sec. 504/ADA coordinator (FTE accessibility coordinator), the Disability Commission, the Public Building Department and the Inspectional Services Department.
2. Once a baseline ADA/Sec. 504 plan is done, the City should adopt an ongoing planning process similar to the model used for CDBG planning. There could be a five-year plan with annual action plans. Some form of public participation such as public hearings, media outreach and a procedure to provide written comments should be incorporated into this process. Due to the generally low numbers of individuals who attend public hearings, smaller, targeted focus groups could be used an alterative way to get needed input. Such focus groups could be done with the Boston Independent Living Center, families involved with the Arc and Federation for Children with Special Needs, the Aging Service Access Point (ASAP),

- tenants groups, and other advocacy groups or service providers.
3. An ADA/Sec. 504 review should focus on both internal and external communication. This would encompass review of updating City TTY/TDD equipment, use of the MA Relay system, policy development regarding use of standardized accessible fonts and font size, Web site accessibility, posting of public meeting notices, etc.
  4. ADA/Sec. 504 training on planning and implementation should be provided to all city departments, commissions and citizen advisory boards.
  5. The ADA/Sec. 504 plan must be available to the general public. The plan also should be made available on the City Web site. It should be available in accessible hardcopy and provided on request. Having the ADA /Sec. 504 plan available in the public and school libraries is advisable.
  6. The City should consider participation in the DOJ Project Civic Access, either through the more involved assessment in conjunction with the DOJ Access Monitors or through the use of the “ADA Best Practices Tool Kit for State and Local Governments.”
  7. The City should contact Swansea, Brookline, Springfield or Barnstable County to discuss their experiences with Project Civic Access.

## **Sec. 504/ADA Technical Assistance**

In a municipality of the size and complexity of the City of Newton, accessibility compliance can be challenging, particularly under the Sec. 504 of the Rehabilitation Act and the Americans with Disabilities Act. It is not just whether or not new construction is compliant but also requires identifying and completing readily achievable barrier removal in older buildings. Service delivery must be provided in a manner that accommodates a wide range of disabilities. Additionally, both laws require accessibility in communication, technology, policy posting, provision of alternative formats of materials, sign language interpretation, reasonable accommodation, etc. As well, under ADA, Title I, the City of Newton is covered as an employer. That means that employment practices such as hiring, retention and reasonable accommodations must be done in an ADA-compliant fashion.

All of the key informants from the different City departments identified a strong need for in-house technical assistance on Sec. 504 and the ADA. The technical assistance needs ranged from someone who could be called with a direct question, to review of technical specifications, to assistance with short-term/long-term accessibility planning. Most staff reported that Sec. 504 and the ADA technical specifications, particularly the ADA Accessibility Guidelines (ADAAG), were very complex. With the recent adoption by the Department of Justice of the updated version of ADA guidelines, this need for assistance will most likely increase. Being able to get technical assistance before acting is an effective way of proactively addressing accessibility and preventing discrimination complaints.

The City of Newton presently has one staff person in the capacity of the Sec. 504/ADA coordinator. It was reported that one-quarter of her time is devoted to ADA and staffing the Disability Commission; the other three-quarters of her time is designated for non-ADA responsibilities. It has been reported by several of the key informants that this is not sufficient to address the accessibility issues in the City of Newton. Currently, there are several pressing needs regarding serving persons with disabilities that the City faces which require significant investments of time and expertise. First, the former Mayor's Committee for Persons with Disabilities will be disbanded due to the creation of the Disability Commission. The establishment of the Disability Commission means an expansion of its scope, recruitment for the nine new members and orientation of these members as well as addressing the day-to-day needs of the work of the Commission. Secondly, a full-time staff person would be able to update and monitor the City Sec. 504/ADA plan. Without a FTE staff person, an outside consultant would be needed to do both. This position also would assist in the drafting of City policies and procedures regarding serving persons with disabilities. Fourth, as stated above, there is a strong need by City departments to be able to access technical assistance on compliance with state and federal mandates, reasonable accommodations, etc. Finally, a full-time accessibility coordinator also would be able to assist the Human Rights Commission and the Fair Housing Committee



with the accessibility issues that arise through complaints or planning for accessible housing.

It would be advisable for the City of Newton to consider a more responsive, proactive approach to serving persons with disabilities and its compliance with federal and state accessibility mandates. A full-time accessibility coordinator would be a cost-effective strategy to assist the City in not only meeting all its compliance requirements but also to provide many of the trainings and good practices development recommended throughout this report. It would be important that such a position have a well developed job description with a very specific set of skills. The accessibility coordinator would need to have several years of experience in the interpretation and implementation of the state and federal accessibility code mandates, reasonable accommodation regulations, accessible service delivery, and the provision of technical assistance. The accessibility coordinator would need to be a recognized expert in training professionals on serving persons with disabilities. Policy development and establishment of best practices for Sec. 504/ADA would be a key responsibility of this position. It was recommended in another section that the Disability Commission be move to the Mayor's Office or the Law Department. Because the accessibility coordinator staffs the Disability Commission, this position needs to be moved in tandem to either the Mayor's Office or the Law Department. Because so much of the work of the accessibility coordinator concerns compliance, having the authority of the Mayor's Office and/or the regulatory expertise of the Law Dept. would facilitate the effectiveness of this position.

### **Recommendations:**

1. Work towards making the present ADA coordinator a full-time accessibility coordinator position.
2. Increase position responsibilities to provide technical assistance in both a planning and a specific answering-question capacity to all City departments.
3. Assist with the establishment of Disabilities Commission.
4. In another section it was recommended that the Disability Commission be move to the Mayor's Office or the Law Department, therefore the accessibility coordinator should be placed there as well.
5. Assist the Disability Commission to recruit and orient members.
6. Staff the Disability Commission.
7. Prepare a new comprehensive ADA plan and Sec. 504 plan for city with measurable goals over a five-year period with annual updates and

reporting. This could be modeled on CDBG planning process. Such a plan could contain advocacy goals.

8. In conjunction with other City departments, do annual assessment of accessibility technology needs. This could be done as part of the capital planning process.
9. Establish accessibility services procedures, policies etc., for City of Newton in general as well as specific to each department.
10. Report annually to Mayor on the state and progress on accessibility by city departments.
11. Identify, plan and conduct in-service trainings and public trainings on disability issues.
12. Work with the Human Rights Commission on investigations involving persons with disabilities.
13. Review allegations of ADA noncompliance by City of Newton.
14. Work closely with ISD to review allegations of noncompliance in City-owned/managed facilities.

## **Newton Fair Housing Committee:**

In an advisory role, the Fair Housing Committee works with the Mayor, the Board of Aldermen and city departments as well as commissions and other citizen advisory committees to integrate policies and practices that promote equal access to housing opportunity and affirmatively further fair housing. The Fair Housing Committee provides education and training on fair housing for property owners, tenants, service providers, realtors and other interested parties. The Fair Housing Committee advocates for efforts that promote equal access to housing opportunity that will make the City of Newton a more welcoming community for everyone.

The Fair Housing Committee (FH Committee) consists of 11 members appointed by the Mayor. There are fair housing advocates, affordable housing advocates, persons with disabilities, developers, and other concerned citizens on the FH Committee. The FH Committee meets monthly to determine priorities, to review progress and to otherwise further its mission. It is staffed by the Planning and Development Department.

The FH Committee with assistance from the Planning and Development Department has engaged in several proactive activities to better understand and address housing discrimination in Newton. In 2006, the FH Committee funded the Fair Housing Center of Greater Boston to conduct a housing discrimination audit for indications of housing discrimination against members of the fair housing protected classes. Also in 2006, the FH Committee funded the Disability Law Center (DLC) to conduct a specific audit to determine indications of discrimination against persons with disabilities. The DLC audit identified significant levels of discrimination against persons with disabilities in differential treatment, as well as the provision of reasonable accommodations and the allowance for reasonable modification.

In 2007, the City was awarded a Fair Housing Initiative Program (FHIP) grant from the Department of Housing and Urban Development (HUD). FHIP grants are used for outreach and education about the Fair Housing Act. The FH Committee and the Planning and Development Department, in conjunction with the Fair Housing Center of Greater Boston, conducted 30 workshops that covered 11 different topics. The disability workshop under this FHIP grant was done by Adaptive Environments. There were 488 individuals who attended at least one of these workshops. Since completion of the FHIP grant, the Fair Housing Committee has presented a variety of fair housing training programs for realtors, housing counselors, service providers, public housing authorities' staff and others. Additionally, the FH Committee is considering a training program on fair housing with a focus on the affirmative duty to further fair housing and its application by City officials. This training would address impediments to housing for persons with disabilities as well as other protected classes. The FH Committee also is contemplating a public information and education campaign to increase understanding of fair housing.

The FH Committee has furthered its mission by working collaboratively with other city commissions and advisory boards such as the Mayor's Committee for Persons with Disabilities (Mayor's Committee). The FH Committee and the Mayor's Committee have shared some of the same members. This arrangement can lead to greater communication and collaboration and should continue with the newly established Disability Commission. Both groups recently participated in the ad hoc task force to develop the new guidance on creating more accessibility in city-funded projects. As the Disability Commission formalizes its tasks and relationships, the FH Committee may need to review its informal and formal relationships with the Commission to advocate for disability housing issues as well as to provide training on such issues.

The FH Committee has developed a strong focus on accessibility for persons with disabilities and their families for several reasons. As previously mentioned, the 2006 disability discrimination audit raised significant concerns about the barriers to equal access to housing opportunity for persons with disabilities in Newton. The audit documented housing barriers for this population as well, particularly around physical accessibility. Some of the FH Committee members have received training in design and construction requirements in the MA Architectural Access Board regulations as well as the federal mandates of the Fair Housing Amendments Act of 1988, the Americans with Disabilities Act, and Sec. 504 of the Rehabilitation Act of 1973. This knowledge can lead to informed actions on the issues of accessibility design & construction and the impact on barriers to equal access to housing opportunity for person with disabilities. All of these factors combined led the FH Committee to determine that a systematic review of how the City manages and should manage accessibility was needed. Such was the impetus for this report.

Fair housing complaints presently are handled under the Newton City ordinance by the Newton Human Rights Commission (see Human Rights Commission section) and not by the Fair Housing Committee. However, the Planning and Development Department staff to the FH Committee does assist the Human Rights Commission on fair housing complaints. The Human Rights Commission is not a HUD-funded Fair Housing Assistance Program (FHAP). FHAPs are authorized by HUD to do investigation and enforcement of the Fair Housing Act. The City of Newton and the Fair Housing Committee should consider the possibility of the city having a FHAP. A FHAP also is responsible for doing fair housing education and outreach. The benefits to the City of Newton having a FHAP will be discussed in greater detail in a separate section.

It was reported that there have been no fair housing disability design and construction complaints filed with the Newton Human Rights Commission, although several key informants reported that there were some developments where there were alleged violations. It is beyond the scope of this report to determine why there is a belief of design and construction complaints but no complaints filed. It is possible that it is due to a lack of understanding as to what the state and federal accessibility design requirements are. It could be a lack of

expertise in such complaints within the City of Newton. However, it is important for persons with disabilities to fully understand what is required and what their options are if the requirements are not met. This is an issue that the FH Committee could pursue as a training initiative for persons with disabilities.

### **Recommendations:**

1. Working with the Disability Commission, the Planning and Development Department and other city departments, the Fair Housing Committee should seek funding to provide the trainings that are recommended throughout this report.
2. The Fair Housing Committee should develop its relationship with the newly established Disability Commission.
3. The Department of Justice has recently issued new ADA guide technical specifications that will impact accessibility for city-funded housing under Title II and public accommodations under Title III. It would be beneficial for a representative(s) of the Fair Housing Committee to receive training on the updated specifications.
4. MAAB is due to release an updated version of its regulations sometime in 2011-2012. Once the new version is released, it may be beneficial for a representative(s) of the Fair Housing Committee to receive training on the updated specifications.
5. In conjunction with the Human Rights Commission, the Disability Commission and the Planning and Development Department, the Fair Housing Committee should explore the feasibility and desirability for the City's having a HUD-funded fair housing assistance program. (See FHAP Section.)
6. As part of the above recommendation, the Human Rights Commission, the Fair Housing Committee and the Disability Commission should discuss with the Boston Fair Housing Commission and the Cambridge Human Rights Commission the impact being a FHAP had on their investigation, education and training efforts.
7. The City's Sec. 504/ADA plan needs to be updated. The Fair Housing Committee should consider collaboration with the Disability Commission, the Planning and Development Department and the accessibility coordinator to develop a new plan to ensure that fair housing will be addressed.
8. Depending on available funding, the Fair Housing Committee should consider having another disability audit to determine if things have

changed since 2006.

9. Consider doing further joint fair housing training with the local real estate board for real estates agencies or agents working in Newton.
10. Work with the Planning and Development Department to develop protocols for an accurate reporting of the number of accessible units for projects funded through the City. (See Accessible Units Section.)
11. The Fair Housing Committee and the Planning and Development Department should consider the incorporation of accessible housing into affirmatively furthering fair housing marketing requirements that go beyond listing accessible units in the Mass Access Registry.
12. The Fair Housing Committee should consider researching further why no design and construction complaints have been filed with the Newton Human Rights Commission. It should also consider providing training in this area.

## **Planning and Development Department:**

The Planning and Development Department has several core responsibilities. Its focus is either in an advisory or funding capacity to further develop and improve the quality of living in Newton. In the area of housing and community development, the department handles architectural access and provides or assists with business loans, homeless assistance, housing development, housing rehabilitation and neighborhood improvements. It also staffs more than 20 citizen advisory committees such as the Fair Housing Committee, the Disability Commission, the Community Preservation Committee, and the Planning and Development Committee. Additionally, the department also manages the Community Preservation Act funds, the home buyer program, and fair housing as well as economic development. The City of Newton ADA coordinator is a staff member of this department.

In terms of accessibility for person with disabilities, the Planning and Development Department plays several key roles. The department has authority through its various funding streams to establish priorities for promoting accessibility with the HUD Community Development Block Grant Program (CDBG), HOME and the Community Preservation Act (CPA) funds. Because of its staffing of the Fair Housing Committee and the Disability Commission, it assumes an internal advocacy role for accessibility. Having the Sec. 504/ADA coordinator located in the department means that the department assumes an accessibility monitoring and compliance role as well. If the Disability Commission is moved to either the Mayor's Office or the Law Department as recommended in other sections of this report, then the question of its Sec. 504/ADA coordinator (FTE accessibility coordinator) staying within the Planning and Development Department would need to be addressed. The department, in working closely with the Fair Housing Committee, has identified accessibility as an impediment for persons with disabilities in the City of Newton Analysis of Impediments to Fair Housing Choice report (AI) and the Fair Housing Plan. The department staff work closely with the Human Rights Commission on fair housing complaints filed with the City. The Planning and Development Department also participated with the recent task force to develop new guidance to promote accessibility in city-funded housing projects.

There is a Fair Housing Web page that is the joint effort between department staff and the Fair Housing Committee. Except for the 2007 Access Audit report done by the Disability Law Center, there is no information that is specific to persons with disabilities on this Web page. The resource sector of this Web page does not list organizations such as the Disability Law Center or the independent living centers/programs in the Greater Boston area. There is no reference to architectural accessibility resources such as the MA Architectural Access Board, the U.S. Access Board and Fair Housing Accessibility FIRST. At the present time, the Disability Commission does not have an information and resource Web page similar to the Fair Housing Committee. If and when it does, this recommendation should be adopted by the Disability Commission as well.

The department has funded two fair housing audits, one of which focused on barriers to housing faced by persons with disabilities. In 2010, the department funded an accessibility scoping & coverage audit to determine accessibility mandates of a specific City-funded project. In collaboration with the Fair Housing Committee, the department funded and served as staff contact for this report. In 2007, the City was awarded a Fair Housing Initiative Program (FHIP) grant from the Department of Housing and Urban Development (HUD). FHIP grants are used for outreach and education on the Fair Housing Act. Disability was one of the 11 different topics that were part of this grant.

The Planning & Development Department has no direct method to determine compliance with the design and construction mandates of projects that are funded federally or by the state. Sec. 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, Title II (local or state government-funded projects) or Title III (public accommodations) cover many of the projects that are funded through the department. The Newton Inspectional Services Department (ISD) is authorized only to inspect for compliance with the state accessibility building code, the Massachusetts Architectural Accessibility Board (MAAB) regulations. ISD is not authorized to inspect and enforce compliance under the federal accessibility mandates because it is not authorized by HUD or DOJ to do so. The City of Newton presently does not have any systemic way of determining whether the City is getting the level of accessibility or number of accessible units as required. In the section on Accessible Units, a new system is proposed. In this new proposed system, ISD would review projects funded through the Planning and Development Department for compliance with the federal accessibility mandates. While ISD would inspect, it would still have no authority to enforce the federal mandates. Once ISD inspects the housing project, it would inform the Planning and Development Department whether it is compliant. If there are issues of noncompliance, it is the Planning Department that would decide what would happen with the project.

The level of expertise of staff who work on accessibility issues ranges from less than one to 10 years. Some of the staff have received training on architectural accessibility specifications on either the state or federal levels. Some have been trained on both state and federal accessibility mandates. In the area of fair housing non-architectural accessibility provisions, such as reasonable accommodations and reasonable modifications, there are various levels of familiarity.

### **Recommendations:**

1. In collaboration with ISD, review the feasibility of establishing and managing a federal accessibility inspection review system as outlined in the Accessible Unit section.



2. In conjunction with the Human Rights Commission, the Disability Commission and the Fair Housing Committee, the Planning and Development Department should explore the feasibility and desirability of becoming a HUD-funded Fair Housing Assistance Program. (See FHAP Section.)
3. As part of the above recommendation, the Planning and Development Department, the Human Rights Commission, the Fair Housing Committee, and the Disability Commission should discuss with the Boston Fair Housing Commission and the Cambridge Human Rights Commission the impact being a FHAP had on their investigation, education and training efforts.
4. The City's Sec. 504/ADA plan needs to be updated. The Fair Housing Committee should collaborate on the fair housing issues with the Disability Commission and the Planning and Development Department to develop a new plan. The accessibility coordinator should take the lead on Sec. 504/ADA planning.
5. The Planning and Development Department should develop protocols for an accurate reporting of the number of accessible units for projects funded through the City. (See Accessible Units Section.)
6. Incorporate accessible housing into affirmatively furthering fair housing marketing requirements that go beyond listing accessible units in the Mass Access Registry.
7. The Planning and Development Department should establish standards for acceptable reasonable accommodation and reasonable modification policies based on the HUD-DOJ Joint Statements (Appendices E&F).
8. Provide basic information regarding accessibility for persons with disabilities on the Fair Housing Web page.
9. The Department of Justice recently issued new ADA guide technical specifications that will impact accessibility for City-funded housing under Title II and public accommodations under Title III. It would be beneficial for a representative(s) of the Planning and Development Department to receive training on the updated specifications
10. MAAB is due to release an updated version of its regulations sometime in 2011-2012. Once the new version is released, it may be beneficial for a representative(s) of the Planning and Development Department to receive training on the updated specifications.

11. The Planning and Development Department should collaborate with the Disability Commission as it establishes the scope of its work.

## **Human Rights Commission:**

The Human Rights Commission (Commission) was founded in 1973. Its mission, as established by City ordinance, is to work toward equal access and opportunity in employment, public accommodation and housing. The Commission works against discrimination based on race, color, religion, creed, national origin, gender, age, disability, ancestry or sexual orientation. When appropriate, the Commission mediates alleged discriminatory actions in Newton, after a complaint has been filed with and investigated by the Commission. The Commission offers educational programs on various human rights issues. In reviewing the list of educational programs on the Human Rights Commission Web site, there appears to have been only one program that included disability issues. The Commission also collaborates with teachers, students, parents and other interested parties to support the school system's diversity curriculum.

The Commission has nine Commissioners appointed by the Mayor with the approval of the Board of Aldermen. The City ordinance states that there should be an advisory council of 20 members appointed by the Mayor. Of this 20, there should be at least one representative from each of the following groups: law enforcement, school department, clergy, fair housing or other appropriate civil rights organization, labor union, and real estate. The fair housing representative is presently the chair of the Newton Fair Housing Committee. While there is nothing in the ordinance that requires representation from the Disabilities Commission, there is one member who currently and coincidentally sits on both bodies. There are also three advisory student members. The Human Rights Commission is within the Department of Health and Human Services. The Commissioner of Health and Human Services Department (or his/her designee) serves as the executive director coordinating and performing administrative duties as determined by the commission.

Discrimination complaints regarding accessibility in housing can come to the Commission in different ways. Individuals can call the Commission's telephone number or download the online non-fillable form and mail it. Complaints sometimes are made directly to the Planning and Development Department or to the ADA coordinator. Regardless of the point of entry, the staff person for the Commission may refer the person for intake to the Planning and Development Department if it is an allegation regarding housing discrimination. If the allegation is for lack of accessibility in a public accommodation or in public housing, the Commission staff person may contact the ADA coordinator for assistance with the intake. Per ordinance, the Commission has the authority to subpoena witnesses, serve written interrogatories, take testimony of any person under oath, and require the production of any evidence and/or answers relating to any matter in question or under investigation before them. Once standing and coverage have been established, a member of the Commission typically will investigate and if appropriate offer and facilitate mediation between the complainant and the respondent. If mediation is not successful, then the complainant may be referred

to MA Commission Against Discrimination (MCAD) or the Department of Housing and Urban Development (HUD).

It was reported that the Commission has never received any accessibility design and construction fair housing complaints, although it has received complaints alleging failures to provide reasonable accommodations and reasonable modifications. Several key informants reported that some housing developments had alleged violations. As mentioned previously, it is beyond the scope of this report to determine why there is a belief of design and construction violations but no complaints filed. For whatever reason, the Commission should collaborate with the Fair Housing Committee and the Disability Commission to explore this issue further.

Although the Human Rights Commission handles fair housing complaints, it is not a HUD Fair Housing Assistance Program (FHAP). A FHAP is funded by HUD to investigate and enforce the federal Fair Housing Act on behalf of HUD. A FHAP is responsible also for doing fair housing education and outreach. The MCAD, the Cambridge Human Rights Commission and the Boston Fair Housing Commission are all FHAPS. The specifics regarding FHAPs will be discussed in greater detail in a separate section.

#### **Recommendations:**

1. The Human Rights Commission, the Fair Housing Committee, the Planning and Development Department, and the Disability Commission should review the desirability and feasibility of the City of Newton applying for FHAP funding.
2. As part of the above recommendation, the Commission, the Fair Housing Committee, the Planning and Development Department, and the Disability Commission should discuss with the Boston Fair Housing Commission and the Cambridge Human Rights Commission the impact being a FHAP had on their investigation, education and training efforts.
3. Regardless of whether the City of Newton decides to pursue becoming a FHAP, it would advantageous for City of Newton staff who work on fair housing complaints to receive investigation training from the HUD Patricia Roberts Harris National Fair Housing Training Academy (NFHTA). The NFHTA provides comprehensive training on investigatory technique, critical thinking and complaint analysis for fair housing and other civil rights (Appendix G).
4. The Human Rights ordinance discusses that there should be at least one representative from a fair housing organization or other civil rights group; it does not specify that there should be a representative from the Newton Fair Housing Committee. The Commission should develop some

formalized process to guarantee that it would always include a Newton Fair Housing Committee member.

5. Currently and coincidentally, there is one member who has chosen to sit on both the Human Rights Commission and the Disability Commission. However, the Human Rights Commission ordinance does not mandate that a Disability Commission have a seat. It would be beneficial to the Human Rights Commission mission to have a designated representative from the Disability Commission on the Advisory Council. Therefore the Human Rights Commission should consider memorializing such an arrangement through an amendment to the ordinance.
6. The Human Rights Commission and the Disabilities Commission should discuss the possibility of co-sponsoring educational programs on disability issues.
7. The Human Rights Commission should collaborate with the Fair Housing Committee and the Disability Commission to explore the issue of why there have been no accessibility design and construction complaints filed.

## **Fair Housing Assistance Program:**

The City of Newton does not have a Fair Housing Assistance Program (FHAP) nor is it mandatory that they do so. The purpose of this section is solely to provide background information on this option.

The Department of Housing and Urban Development (HUD) funds the Fair Housing Assistance Program (FHAP). A FHAP investigates and enforces the Fair Housing Act on behalf of HUD. A FHAP can be a municipality, county, state or other regional government entity that enforces fair housing laws/ordinances that are substantially equivalent to federal Fair Housing Act. Funding is provided annually on a noncompetitive basis. When a new FHAP is formed, it has three years to do capacity building. This includes hiring staff, establishing protocols, training and outreach. The annual funding during capacity building is \$125,000. After capacity building is completed, the FHAP is paid \$2,500 per complaint managed. There are presently three FHAPs in Massachusetts. They are the MA Commission Against Discrimination (MCAD), the Boston Fair Housing Commission (BFHC) and the Cambridge Human Rights Commission (CHRC).

There are several stages to how a FHAP processes a complaint. The first step is intake, which involves compiling the information that a complainant provides in a manner mandated by HUD. Once the information is received, it is reviewed to determine the standing of the party filing the complaint and if the alleged discriminatory action reported falls within the provision of the Fair Housing Act. If the person has standing and the action is covered under the Fair Housing Act, the complainant moves forward and the respondent is notified.

The next stage could be conciliation. Conciliation is a voluntary step in the investigation process. Conciliation is an attempt to resolve the issues identified by the complainant without determining probable cause against the respondent. Conciliation attempts to reach a settlement that will be acceptable to both parties. This process is similar in terms of practice and scope to the mediation process that the Newton Human Rights Commission presently offers.

If conciliation is unsuccessful or if the parties do not agree to go through conciliation, an investigation will begin. HUD has determined the procedures to be followed on how evidence is taken, evaluated and acted upon. If there are indications of discrimination, then probable cause is determined. The FHAP may again attempt conciliation at this point in another attempt to resolve the issue. If conciliation is not successful or the FHAP determines that conciliation need not happen, the complaint moves to an administrative hearing. It is at this stage that a determination of discrimination is made. Fines can be levied, damages can be awarded and other corrective measures such as the respondent receiving fair housing training can be mandated.

**Recommendations:**

1. As part of the above recommendation, the Human Rights Commission, the Fair Housing Committee and the Disability Commission should discuss with the Boston Fair Housing Commission and the Cambridge Human Rights Commission the impact being a FHAP had on their investigation, education and training efforts.
2. In conjunction with the Human Rights Commission, the Disability Commission, the Planning and Development Department, the Fair Housing Committee should explore the feasibility and desirability of becoming a HUD-funded Fair Housing Assistance Program.

## **Disability Commission:**

On December 13, 2010, Mayor Setti D. Warren submitted a letter to the Newton Board of Aldermen requesting that the Mayor's Committee be given commission status. The Board of Aldermen approved this measure. The Disability Commission would be established under the provisions of Section 8J of Chapter 40 of the Massachusetts General Laws. Section 8J states "Such commission shall (1) research local problems of people with disabilities; (2) advise and assist municipal officials and employees in ensuring compliance with state and federal laws and regulations that affect people with disabilities; (3) coordinate or carry out programs designed to meet the problems of people with disabilities in coordination with programs of the Massachusetts office on disability; (4) review and make recommendations about policies, procedures, services, activities and facilities of departments, boards and agencies of said city or town as they affect people with disabilities; (5) provide information, referrals, guidance and technical assistance to individuals, public agencies, businesses and organizations in all matters pertaining to disability; (6) coordinate activities of other local groups organized for similar purpose."

The Disability Commission will have no fewer than five members but not more than nine. The members would be appointed by the Mayor. Persons with disabilities would comprise the majority of the commission membership. One seat would be for a member of the immediate family of a person with a disability. Another would be an elected official or a representative of such an official. The Disability Commission should consider designating some of the remaining seats while still maintaining the majority for persons with disabilities. It would be advisable to consider such designations for an architect knowledgeable in accessibility or an accessibility consultant, a MA Office on Disability-trained Community Monitor, a disability service provider or an employer. These additional types of members would provide the Commission with a broader scope of technical expertise to enhance its advocacy and educational goals. Section 8J does not expressly forbid such designations of seats.

The Disability Commission had not been formed at the time of the key informant interviews. However, the Mayor's Committee for Persons with Disabilities (Mayor's Committee) was still active and its members were interviewed. The recommendations from the Mayor's Committee that appear in this report are forwarded for consideration by the Disability Commission. The Mayor's Committee had expressed that its role should be expanded to provide basic education and training on disability issues. One area that the Mayor's Committee identified is accessibility training for local businesses. In the discussion with the former Mayor's Committee, the lack of physical accessibility in local retail and other types of commercial buildings governed by the public accommodations of ADA Title III and MAAB rules was identified as a major concern. Members provided a few examples of a loss of accessibility when a building was remodeled or extensively rehabbed. The Mayor's Committee also believed that disability education is needed for the general population to promote better understanding



and support for the need for accessibility. The Mayor's Committee also identified the need for disability sensitivity training.

Resources will be needed to accomplish these issues under the Disability Commission. It was envisioned that once commission status was established, all revenue collected through the levying of fines for handicap parking violations would be given to the Disability Commission. The Mayor's Committee stated that disability commissions in other municipalities have such funding arrangements. It is beyond the scope of this study to evaluate how this is structured in other municipalities or if the City of Newton is able to direct all or part of this revenue stream to the newly established Disability Commission. It is however worth further study. To accomplish all that Section 8J outlines as a disability commission's responsibilities, it will need additional revenue for staffing plus education and outreach

Key informants reported that the Disability Commission will need additional staff assistance. The ADA coordinator, who staffed the Mayor's Committee, is presently one-quarter FTE for that work in addition to provide technical assistance to other city departments. In addition to assisting the Mayor's Committee, the ADA coordinator must also provide technical assistance and arrange for reasonable accommodation requests for visitors and City departments who do not have the capacity to perform this function. The present staffing was inadequate to support all the functions of the Mayor's Committee. As a Commission, it will have a greater need for staffing assistance.

As City of Newton establishes the Disability Commission, it is advisable that different models in other municipalities be reviewed. It would be beneficial to review the commissions in Boston, Cambridge and Medford. All three have different structures and operate in very different ways. The Boston Disability Commission recently underwent some basic changes. Formerly it was part of the Office of Civil Rights and did not have an active citizen advisory component. It is now within the Department of Neighborhood Services. This gives the Commission a stronger constituent services focus. The Boston Disability Commission now has a citizen advisory component. Presently, the Boston Disability Commission has a paid full-time commissioner and three staff persons.

The City of Cambridge has an active citizen advisory component and two paid staff, one of whom is a full-time director. The Cambridge Disability Commission works very closely with other city departments, particularly the Cambridge Human Rights Commission in its investigatory efforts. The Cambridge Disability Commission has a strong education and advocacy role.

The City of Medford has an active disability citizen advisory component. They have a paid staff person who is also responsible for human rights and fair housing. That person is also the city's ADA officer. The Medford Disability Commission has a mandate for advocacy and education.

The Disability Commission is located within the Planning and Development Department. It is staffed by the ADA coordinator, who is considered Planning and Development Department staff. In general, it is advisable that a disability commission have some degree of autonomy so that it can perform in an unhampered function, particular around advocacy and assessment goals. Therefore, the City should consider having the Disability Commission that is autonomous of any department that it would be assessing for accessibility compliance or its ability to serve persons with disabilities. Remaining in the Planning and Development Department may be viewed as a conflict of interest. A possibility is to have the Disability Commission be completely autonomous of any City department and report directly to the Mayor. Another possibility is to have it report to the Law Department due to its compliance review role. The Sec. 504/ADA coordinator (accessibility coordinator as described in the Technical Assistance section) should be located in the same department as the Disability Commission.

Sec. 504/ADA plans can be the major vehicle of establishing priorities, identifying areas in need of improvement and monitoring progress. However, there is concern that the current ADA transition plan, completed in 1992, is outdated. The Mayor's Committee supported a comprehensive update for the ADA plan. The Disability Commission in collaboration with the accessibility coordinator, the Fair Housing Committee, and the Planning and Development Department should consider developing an ADA planning process similar to the CDBG process of a five-year plan with annual action plans.

Both the Mayor's Committee and the Planning and Development Department reported that their collaboration has been key to developing CDBG funding priorities concerning needed accessibility, such as curb cuts. The public hearings conducted in the past by the Mayor's Committee were vital in identifying areas most in need of accessibility modifications. Past priorities have covered public accommodations such as recreational facilities, curb cuts and traffic signaling upgrades. Also the ADA plan could be used as a vehicle tied to CDBG planning. The Disability Commission and the Planning and Development Department should collaborate on continuing these hearings for use of CDBG funding priorities.

Based on interviews with the Mayor's Committee and other key informants, it appears that the Committee historically had a limited role in housing. Their main focus has been on public accommodations. While public accommodations must remain a priority, housing for persons with disabilities is an area that should be key to the work of the Disability Commission. The Mayor's Committee and other key informants were concerned that meaningful integration into the community by persons with disabilities does not appear to be happening. This is supported by the disability audit funded by the Fair Housing Committee in 2007. That testing indicated that there were significant barriers to housing opportunity for persons with disabilities. That testing report clearly demonstrated that further work is needed in this area. The Disability Commission should seek training on housing

issues so it can increase its role in housing planning. The representation of the Disability Commission on the Fair Housing Committee would be a good step towards that goal but more needs to be done. Before the Disability Commission can consider a lead or strong role beyond technical assistance, it must be very knowledgeable about state and federal laws regarding housing accessibility, fair housing, funding and housing program.

### **Recommendations:**

1. Relocate the Disability Commission to report directly to the Mayor or to the City Law Department. Relocate the accessibility coordinator in tandem with the Disability Commission.
2. An expanded membership of Disability Commission to include other designated seats while maintaining that majority of seats are for persons with disabilities would provide a wider spectrum of knowledge and experience.
  - a. Architect or accessibility consultant
  - b. Trained community monitor
  - c. Disability service provider
  - d. Employer
3. Seek funding for a full-time accessibility coordinator.
4. Take the lead on and assist accessibility coordinator in preparation and review of ADA plan.
5. Work closely with Veterans Services to address unmet needs of veterans with disabilities, provide education, and do joint advocacy.
6. Together with other appropriate entities, organize annual trainings for the general population as well as local businesses/housing and service providers.
7. Sponsor regular community monitor training with the MA Office On Disability.
8. Recruit persons in Newton to become trained by the MA Office On Disability (MOD) as community monitors.
9. Organize events around significant disability milestones, such as ADA anniversary, Disability Employment Month, etc.
10. Maintain active advisory role in the CDBG project recommendation and implementation process.

11. Call public meetings on specific topics outside the regularly scheduled monthly meetings as needed (for example, a public meeting to discuss accessibility in shopping areas or housing).
12. Relationship with Inspectional Services Department:
  - a. Joint meetings at least four times per year.
  - b. Establish two-way reporting procedure regarding allegations of non-compliance.
13. Develop and conduct advocacy plan.
14. While not required by its ordinance, it would be beneficial to its mission by having a representative from the Disability Commission on the Human Rights Advisory Council.
15. The Human Rights Commission and the Disability Commission should discuss the possibility of co-sponsoring educational programs on disability issues.
16. The Disability Commission members should receive training on state and federal laws regarding housing accessibility, fair housing, funding and housing programs to expand their role in housing.
17. As directed in Section 8J, develop working relationships with City departments, commissions and citizen advisory committees for purpose of provision of technical assistance, priority identification and joint problem solving.

## **Public Buildings Department:**

According to the Web site for the City of Newton, “the Public Buildings Department is responsible for the construction, alteration, repair and maintenance of all city-owned public buildings. We are committed to preserving and renovating all 85 public buildings through environmentally responsible design, construction and daily maintenance. Ensuring the sustainability of our buildings.” Municipal buildings are covered under the Massachusetts Architectural Access Board regulations and the Americans with Disabilities Act Title II and Title III. Any program receiving federal funds located in a municipal building also will be required to meet the accessibility mandates of Sec. 504 of the Rehabilitation Act of 1973. This makes the Public Buildings Department (Public Buildings) a key player in providing and maintaining accessibility for persons with disabilities in the City-owned buildings. At the time of the key informant interview, the new Public Buildings commissioner had not yet assumed her position and therefore was not available for this report. However another key informant was interviewed at that time.

The Public Buildings Department has oversight responsibilities for 85 municipal and school facilities. It was reported that the School Department had a capital plan that included accessibility needs (see School Department section.) The key informant believed that the Public Buildings Department once had a capital plan that included accessibility modifications, but that it was outdated. It was explained that access improvements were being done in a reactive fashion as opposed to part of a written plan with an established timeline. It was reported by other key informants that once the new commissioner began, she reported that she wanted to review issues of accessibility. To that end she met with the Mayor’s Committee for Persons with Disabilities to discuss access improvements in City Hall.

The key informant reported that Public Buildings did not have staff that were knowledgeable of accessibility requirements on the state and federal levels. When this type of expertise is needed, Public Buildings Department relies on the ADA coordinator for specific questions but uses an outside architect for more complicated questions or for planning needs. The Public Buildings Department also contacts the Inspectional Services Department on an as-needed basis. ISD now inspects public buildings, which will further assist the Public Buildings Department. It was the opinion of the key informant that the Public Buildings Department would benefit from having in-house expertise on accessibility requirements. It was also stated that all Public Buildings Department staff would benefit from training on accessibility.

The Public Buildings Department was aware of the 1992 City of Newton ADA Transition Plan. The key informant stated that the city ADA plan was outdated and no longer useful. He was in favor of the development of a new ADA Plan that would assist Public Buildings to prioritize and plan for future accessibility projects. Public Buildings was considering the hiring of a new capital planner. If this happens, the capital planner would directly assist Public Buildings to plan for

accessibility, but it was also thought to benefit the development of a new ADA Plan.

Because many of the City buildings are old and built prior to the passage of access building codes and mandates, retrofitting for accessibility will be technologically challenging and expensive. A significant barrier to making municipal and school buildings accessible is the lack of funds. Because of these difficulties the need for a proactive planning process for accessibility is very important. The recommendation is to do accessibility planning as a formalized cabinet-level process.

**Recommendations:**

1. The Public Buildings Department should collaborate with the Disability Commission and the accessibility coordinator on developing a new ADA plan.
2. The Public Buildings Department should have designated staff trained on accessibility specifications to assist in day-to-day operations.
3. All Public Buildings Department staff should receive generalized accessibility training.
4. The Department of Justice recently updated its accessibility guidelines for the Americans with Disabilities Act (ADA), which go into effect in March 2012. Public Buildings staff should receive training on the updated guidelines.
5. The Public Buildings Department should explore the possibility of staff receiving training on the current MAAB regulations.
6. MAAB is due to release an updated version of its regulations sometime in 2011-2012. Once the new version is released, the Public Buildings Department should contact MAAB for information regarding training for staff.

## **Department of Public Works:**

The Department of Public Works (DPW) serves many accessibility functions for residents of the City of Newton. These functions include the installation of traffic signals and road work. Installation of traffic signals could be a complete new unit or the addition of an auditory component. Road work includes new street construction as well as repair. Depending on the degree of road work, the DPW becomes responsible for the construction of accessible curb cuts. Additionally, depending on the availability of Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) funds, the DPW may be constructing new curb cuts without the trigger of road work. The DPW identifies traffic signals and curbs cuts as their most significant accessibility priorities.

Needed curb cuts are identified in two ways. The first is through road work; new road construction and repair will trigger mandatory curb cuts under both federal and state laws. The second method is through the CDBG planning process; CDBG funds can be used for accessibility including traffic signals and curb cuts. Under CDBG, there is a five-year plan and annual action plans which identify how the City of Newton will be using these funds. The Mayor's Committee for Persons with Disabilities, in conjunction with the Planning and Development Department, has conducted public hearings, which allow persons with disabilities and other concerned community members to identify accessibility issues. The need for curb cuts at specific locations is provided by persons attending these public hearings. Based on available CDBG funds, a list of curb cuts as well as traffic signals are prioritized for construction. The DPW then uses this list for their curb cut construction planning. In general, the number of identified needed curb cuts exceeds available funding.

Traffic signals are an important safety feature for all pedestrians, but they are particularly so for persons with disabilities. Traffic signals are key to mobility for many people with disabilities. For persons who use wheelchairs or persons who walk slowly due to their disability, a traffic signal makes safe passage possible. Replacing old traffic signals with upgraded models with auditory signals assists persons with low vision or blindness to better negotiate street crossings. Traffic signal installation and prioritization happens in a few ways. Requests can come from the Board of Aldermen, disability advocates or private citizens. Decisions regard traffic signal installation also can be triggered due to road work or the need to replace signals that are broken or need to have an auditory component. Changes in traffic patterns can also cause requests for signal installation.

The DPW has developed its accessibility expertise in many ways. Some of the department staff have received training on state and federal accessibility technical specifications as well as scoping & coverage. The DPW has established a good working relationship with the Massachusetts Architectural Access Board (MAAB) staff. DPW staff frequently contact MAAB staff for technical assistance and advisory opinions. However, the DPW staff interviewed reported that more training on MAAB would be advantageous for staff. The DPW uses its

engineering staff to do site plan review. The site plans would include the proposed accessibility features. The site plan review has aided the DPW's ability to construct curb cuts and site traffic signals in an accessibility code-complaint manner.

**Recommendations:**

1. The Department of Justice recently issued new ADA guide technical specifications that will impact some of the work that the DPW does. It does have implications for instance in auditory traffic signals, tactile warning strips and curb cuts. The Newton DPW should have staff trained on these updated guidelines.
2. DPW should explore the possibility of staff receiving additional training on the current MAAB regulations.
3. MAAB is due to release an updated version of its regulations sometime in 2011-2012. Once the new version is released, DPW should contact MAAB for information regarding training for staff.



## **School Department:**

The Newton School Department serves approximately 12,000 students. It includes buildings at the primary, middle and high school levels. The age of the schools ranges from the brand-new Newton North High School to buildings that were constructed prior to the establishment of accessible building codes. As is true in many school departments across the Commonwealth, funds, particularly those for capital improvements, are limited.

The Newton School Department has approached accessibility on two levels. One is through the Individual Educational Plan (IEP) for specific students. The other level is through its capital planning and maintenance process. While the IEP process will provide for accessibility modifications that benefit a specific student, it is not an effective process for addressing major compliance issues. The School Department fully recognizes this limitation. To address this shortcoming, the department developed a capital plan. While not exclusively focused on code accessibility, the department did include it as a significant priority. The School Department hired an outside consulting firm to assist in the development of the capital plan. The consulting firm identified areas of needed repair, general maintenance or modification as well as accessibility code compliance issues. The plan was prioritized based on the greatest need. The plan is presently being re-evaluated by the Mayor and the School Department.

The School Department has used its capital budget mostly for larger projects. For such large projects, an outside architectural firm is hired. The School Department and its architectural firm have worked closely with the Inspection Services Department (ISD) on large projects to address all issues of state building code compliance, including accessibility. The participation of ISD begins at the plan review stage and continues until the project is completed. While this approach adds an additional level of bureaucracy, it has proven to be effective in identifying issues early to avoid costly retrofitting. On the small- to medium-size projects, the responsibility for addressing accessibility moves to the architect. If the project requires a permit, then ISD will do plan review for state access code compliance.

The School Department uses specific strategies to maximize accessibility in the older buildings while minimizing cost. For example, there is a preference to locate common-use educational facilities such as music and art rooms on the grade- or first-level floors. Such approaches can achieve accessibility while reducing the need for costly elevators. To better maximize this type of accessibility strategic planning, it was reported that greater availability of technical assistance would be needed.

As mentioned above, the IEP process does identify needs for accessibility modifications for a particular student(s) but is not intended as a comprehensive strategy for comprehensive accessibility. If a physical modification is needed as part of an IEP, the SPED administrator can call together a team to do problem solving. The team can request technical assistance, either internally or externally,

to develop an individualized modification plan. If it is technologically infeasible to do the physical modification, than a transfer to another school building that already has the requested accessibility feature may happen.

Because the Newton School Department receives federal funds, it does have responsibilities under Sec. 504 of the Rehabilitation Act. It also is covered by the Americans with Disabilities Act, Title II and Title III because it receives state funds and has public accommodations. Both of these federal laws mandate the provision of reasonable accommodations. A reasonable accommodation request can be built into an IEP plan or it can be made independently.

The Newton School Department has a basic statement of respect to promote appreciation, inclusiveness and respect for all students of all civil rights-protected classes. All students, parents, faculty and staff are expected to follow this statement. This statement is a reminder that integration of students with disabilities is not limited to physical modifications but also to a higher level of community inclusion.

#### **Recommendations:**

1. Any capital plan, especially if it includes accessibility modifications or retrofitting, should be periodically and systemically re-evaluated. The School Department should do such a re-evaluation including accessibility on a regular cycle, such as every five years.
2. As identified, technical assistance on physical accessibility is needed for large, medium and small projects as well as IEP-identified needs for architectural or program access related to communication, auxiliary aids, etc. The School Department should explore ways to institutionalize such technical assistance through the training of internal staff and/or fee-for-service consultants.
3. The partnership between the School Department and ISD is a good one. The two departments should identify ways that will strengthen this relationship to increase accessibility but eliminate bureaucratic procedures that may hinder efficiency.
4. Because some of the capital projects will not be begun by March 2012, they will be not covered under the updated ADAAG. However, voluntary compliance was allowable as of 9/15/10; therefore it would be advisable for the School Department to follow the updated version.
5. Designated staff should receive training on the updated ADAAG.
6. MAAB is due to release an updated version of its regulations sometime in 2011-2012. Once the new version is released, designated School

Department staff should attend training that MAAB offers at that time.

7. The School Department Statement of Respect is a good model and should continue to be used to promote respect and inclusion of students with disabilities. This statement should be shared with other City departments for incorporation into their own mission statements.

## **Department of Parks and Recreation**

The Department of Parks and Recreation had all City-owned parks assessed for accessibility feasibility. Based on this assessment, department staff prioritized projects taking into consideration level of functionality and available resources as well as the input from the Mayor's Committee for Persons with Disabilities. This accessibility assessment was built into its Master Plan. The department's Accessibility Prioritization Project Report: FY 11-FY15 lists three top priorities for accessibility upgrades. It also lists 54 other priorities distributed throughout the seven wards. The department currently uses both the Massachusetts Architectural Access Board (MAAB) regulations and the 1991 Americans with Disabilities Architectural Guidelines (ADAAG) to determine code compliance. The recently updated ADAAG does not go into effect until March 2012 so the department can apply the 1991 standards or voluntarily use the updated version at this time. The department has a full-time special needs coordinator but often requests technical assistance from the City's ADA coordinator.

Department staff identified several factors that hamper their efforts to have the parks be more accessible. The Newton parks are quite old. Many were built prior to the development of accessibility standards on the state and federal levels. Accessibility retrofitting can be more expensive than construction of new parks. Retrofitting does not always achieve full accessibility, particularly around site conditions. If the natural terrain was not leveled when a park was first built, it may be difficult and in some cases impossible to create a fully level area for accessibility. Staff did indicate that more training on accessibility would be useful but did not perceive this as a major barrier to their planning and prioritization. Limited resources both in terms of funding and staffing make it difficult for the department to deal with accessibility issues as quickly as they would like.

### **Recommendations:**

1. Continue the present planning and prioritization process.
2. Continue to identify and apply for additional funding.
3. The City should explore an increase in staff hours for the accessibility coordinator so she/he can increase his/her technical assistance support for the Department of Parks and Recreation.
4. Because most of the projects on the prioritization list will not be begun by March 2012, they will be not covered under the updated ADA guidelines. However, voluntary compliance was allowable as of 9/15/10, and therefore it would be advisable for the Department of Parks and Recreation to follow the updated version.
5. Staff should receive training on the updated ADA guidelines.

6. The Department should explore the possibility of staff receiving additional training on the current MAAB regulations.
7. MAAB is due to release an updated version of its regulations sometime in 2011-2012. Once the new version is released, the department should contact MAAB for information regarding training for staff.

## Office of the City Clerk

The Office of the City Clerk is the official record keeper for the City. One of its responsibilities is providing information to the general public by posting public notices for the Board of Aldermen as well as the city departments, commissions and citizen advisory boards. The MA Open Meeting Law, M.G.L. c. 30A, §§ 18-25 allows for a public meeting to be posted at least 48 hours in advance of the public meeting, excluding Saturdays, Sundays and legal holidays. The Americans with Disabilities Act (ADA) requires that public postings be in a legible, easily understandable format. In Newton, public notices are posted on the internal bulletin boards and at the two external entrances to City Hall. Such notices are also posted on the City Web site.

There are several accessibility issues that can affect public notice postings. The first is the posting in a physically accessible location. To address this issue, one of the external bulletin boards is located near the accessible parking and entrance to City Hall. A second issue is that the posting itself should be accessible. This can be achieved through the use of an accessible font and point size legible for most readers. Presently, the City does not have a policy that standardizes font or point size. This results in some notices being easier to read than others. Alternate formats such as large print or Braille are made available upon request. The city clerk and the ADA coordinator collaborate to ensure that contact information regarding the requests of such alternate formats as reasonable accommodations is posted prominently on the bulleting boards. The last venue for public notices and information regarding city services is through the city Web site, [www.ci.newton.ma.us](http://www.ci.newton.ma.us). It was reported that the City Web site is accessible by screen readers for persons with vision loss. It was also reported that PDF documents on the Web site can be read by screen readers. Other adaptable features on the Web site allow the user to adjust font and point size to accommodate their disability.

While the MA Open Meeting Law, M.G.L. c. 30A, §§ 18-25 does allow the posting of notices up to 48 hours prior to the meeting, excluding weekends and legal holidays, waiting until that close to date of the meeting may cause a disparate impact for person who are deaf and/or blind in terms of granting reasonable accommodation requests. If a deaf person reads a notice at the 48-hour point and is interested in attending the meeting, it will be unlikely that an interpreter will be found in time. At the present time, Massachusetts Commission for the Deaf & Hard of Hearing, except in emergency situations, needs a minimum of two weeks' prior notice for requesting an American Sign Language (ASL) interpreter. If persons who are blind need the materials for the meeting in Braille, it will usually take longer than 48 hours to get those materials transcribed.

## Recommendations:

1. The City should adopt policies and practices that standardize an accessible font and point size for all public notices. Fonts such as Ariel, Times Roman and Microsoft San Serif are examples of accessible fonts. A point size of 14 -18 is a very legible size for most persons to read. Large print is generally 20+ point.
2. The City should evaluate whether practices of routinely posting notices at 48 hours is a barrier for individuals who need adequate time to contact the Clerk's Office and the ADA coordinator to arrange for interpreter services and other accommodations for persons with disabilities. The City Clerk and the ADA coordinator are presently reviewing this situation to identify possible strategies. One strategy under consideration would be for the City to form its own pool of interpreters who would be available on shorter notice than required by Massachusetts Commission for the Deaf & Hard of Hearing. The City could set up an account with a local Braille transcriber that would commit to produce Braille version of the documents quickly enough to eliminate disparate impact.
3. The City Web site does provide many good accessible features. One concern is that there is a lot of information on each page, not always on the same topic. This may present difficulties for someone with limited vision or a cognitive-related disability to manage. Simplification of the individual Web pages would contribute to greater readability. Greater readability of a Web site does increase accessibility.
4. The Department of Justice has just completed its comment period on ADA requirements for Web sites. Once DOJ issues its final rule on Web accessibility, the City should review its Web site for compliance with those standards.
5. The City should consider using a digital signage system for posting all public meeting notices as well as other useful information. Digital signage systems can be programmed to meet the needs of the multiple demographic groups within the City. Some can be programmed for standardized accessibility, be updated easily and reduce paper usage. Some have touch screens for easier navigation. While not as multi-functional as information kiosks, they can be an affordable and pragmatic tool.

## **Veterans Department**

The Veterans Department's mission is to provide services and benefits under Chapter 115 M.G.L. to veterans and their dependents in need of emergency financial and medical assistance. Additionally, disabled veterans frequently look to the City of Newton Veterans Department for other types of assistance. The Veteran's agent identified lack of accessibility as a significant barrier for the younger disabled veterans just returning from combat duty as well as the older veterans who are becoming disabled through the aging process or worsening of combat-related injuries. Staff report that the majority of accessibility issues identified by veterans were public accommodation issues. One concern is that the increased popularity of outside restaurant dining has created significant barriers to paths of travels for veterans in wheelchairs or those using other mobility aids such as canes, walkers, etc. Sidewalks that once were wide enough to safely and easily transverse become too narrow and hazardous when dining tables are placed there during the warm weather months. Another identified public accommodation issue is when modifications to stores result in less accessibility than they originally had. When accessibility in stores is lessened it creates barriers for disabled veterans to patronize local businesses. This loss of patronage would result in a loss of sales by a particular store if the disabled veteran is forced to go elsewhere for groceries, prescriptions, etc.

The Veterans agent reported that housing has not been a major focus for the veterans that come to his office. This lack of focus by veterans was identified in of itself as an issue of concern. Staff noted that more training on affordable and accessible housing would benefit all veterans but particularly disabled veterans. Veterans are a fair housing protected class under MA Chapter 151B, but most veterans are unaware of this civil right protection. Staff stated that fair housing education and outreach should happen for veterans.

It was reported that a stronger relationship between the Veterans Services and the Disability Commission would benefit disabled veterans. Because of the high incidence of disabilities for veterans of all ages, the Veterans agent believes there would be a strong benefit for his office and the Disability Commission to work closer together. Joint advocacy and identification of needs for use of City funds for accessibility could result in a more informed prioritization process. Sharing of information, particularly regarding resources and unmet needs, would also enable both entities to serve their target populations.

### **Recommendations:**

1. The Veterans Department should collaborate with the Planning and Development Department and affordable housing advocates to provide veterans with information on their housing options.



2. The Veterans Department does use its local cable access to educate veterans on what is available to them. Future programming should be offered on fair housing, affordable housing and accessibility.
3. The Veterans Department and the Disability Commission should meet on a regularly scheduled basis to share information resources, identify priorities that need to be addressed and develop a stronger identification of needs for disabled veterans and other persons with disabilities for City funding.
4. The Veterans Department staff should attend City-sponsored trainings on fair housing and accessibility.
5. The Veterans Department staff should be involved in any outreach for City-sponsored trainings on fair housing and accessibility so veterans can participate.
6. The Veterans Department staff should inform the Fair Housing Committee of any barriers that are confronting veterans in obtaining housing or accessibility in housing or assist veterans to file complaints with the Human Rights Commission.

## **Elections Commission:**

The Newton Elections Commission has several essential functions. It is the city department responsible for the administration of elections on the municipal, state and federal levels in a manner compliant with all relevant laws and regulations. Additionally, the Election Commission provides oversight and inspection of municipal campaign and political finance reports for accuracy and compliance with state campaign finance laws. It certifies nomination and petition papers for federal, state and municipal offices. The department also manages the City's annual census. This census data is used to update population data. This information is provided to city departments to ensure the appropriate level of funding by the Commonwealth as well as other funding sources.

There are presently 31 polling places in Newton. Due to re-precinating, this number may be reduced to 24. In conjunction with the MA Office on Disability (MOD), the Election Commission staff reviewed both the physical and service delivery levels of all polling place a few years ago. After this review was completed, the Election Commission made whatever modifications were needed. For example at one location, an automatic door opener was installed.

The City uses the AutoMark Voter Assist Terminal as the central assistive technology for voters who have disabilities. Its features assist voters who need sip & puff capability due to quadriplegia. It has an auditory capability that facilitates voting for persons who are blind. The terminal zoom function will enlarge print to an individualized appropriate size for persons with low vision. There is at least one AutoMark at each polling place. This terminal is tested three times during the day on Election Day to ensure that it is functioning properly. All poll workers are trained not only in the use of AutoMark but in other ways to accommodate persons with disabilities. However, there is a need for training on how to assist person with cognitive disabilities. The key informant stated that training poll workers more frequently on how to assist persons with disabilities would be beneficial.

One concern is that the Elections Commission does not have a Telecommunications Device for the Deaf (TDD). TDDs are often referred to as TTYs. The Election Commission staff relies on the central TDD that assists all of City Hall. On Election Day, a deaf person in need of assistance has no immediate or direct way to contact Election Commission staff. Either having a TDD within the Election Commission office or training staff on the use of the Mass Relay System would increase the department's ability to more efficiently respond to elections day problems for persons who are deaf. Mass Relay provides a valuable communication between TDD users and those who do not have access to a TDD. It is available 24 hours a day, 7 days a week. Mass Relay does not charge a fee to users of its services.

**Recommendations:**

1. Provide direct and immediate access to deaf individuals on Election Day either through use of Mass Relay or through a department TDD.
2. Accessibility of polling sites should be a major focus through the re-precinating process.
3. Poll workers should receive training on how to assist persons with cognitive disabilities to vote.
4. Work with the accessibility coordinator to provide training on how to assist voters with disabilities more frequently for poll workers.

## **Newton Housing Authority:**

The Newton Housing Authority (NHA) is a quasi-public entity not a department of the City of Newton. The NHA is the largest provider of affordable housing in Newton. The NHA establishes its own policies and procedures within the mandates of its various funding sources. The NHA Board of Commissioners is responsible for the overall leadership of the agency. Day-to-day operations and management is under the purview of the Executive Director. The NHA portfolio consists of 6 federally funded developments: Parker House, Jackson Gardens, Horace Mann, Norumbega Gardens, Echo Ridge and Nonantum Village. This is a total of 298 units of which 8 units are reported by the NHA to be compliant with state accessible code and/or federal mandates. (Information provided by the NHA did not include information regarding accessible units at Parker House and Jackson Gardens). Their state funded portfolio has a total of 171 units. The NHA reported that of the state units, 21 units are reported to be compliant with state accessible code and/or federal mandates. In a third category of units, the NHA Management Program, the portfolio consists of 55 units of which 2 are reported by the NHA to be compliant with accessible codes and/or federal mandates.

A unit can only be designated as accessible when it is compliant with the appropriate federal and/or state accessibility codes/mandates. The specific government funding source is a key determinant of accessibility for the NHA as is true for most housing authorities in Massachusetts. Properties that are funded through the federal government such as the Department of Housing and Urban Development (HUD) will trigger Sec. 504 of the Rehabilitation Act of 1973. Sec. 504 not only covers physical accessibility but that of service delivery. Service delivery will cover things such as recreational, social, and education programming. Service delivery would also cover things such as reasonable accommodations needed to access programs, for example rental voucher applications in large print, sign language interpreters, home visits, etc. Sec. 504 presently uses the Uniform Federal Accessibility Standard (UFAS) as the mandatory accessibility specifications.

Housing developments, including public housing developments that receive funding from state and/or local government will trigger compliance with Americans with Disabilities Title II, which uses UFAS or ADA Access Guidelines (ADAAG) as the accessibility standard. Similar to Sec. 504, ADA Title II covers service delivery. If there is a public accommodation feature, regardless of funding source, then ADA Title III will be triggered for that feature. In a public housing authority, public accommodations can be a leasing office, a rental voucher application site or a manager's office. Other factors that can trigger accessibility include the date of first occupancy, number of units, new construction or degree of rehabilitation. These last factors become key in determining whether and to what degree, the Massachusetts Architectural Access Board code and/or the Fair Housing Amendments Act Design and Construction Requirements apply. For further information about accessibility scoping and coverage please review Appendices B & C.

For this report, the NHA submitted two letters from their architect outlining the accessibility of all properties except Parker House and Jackson Gardens. There was no information provided explaining the exclusion of those two developments. The letters explained that the architect had done a visual walkthrough inspection of the units. A walkthrough is a minimal review of accessible design features, but it is not a means of determining compliance with state and federal accessibility mandates. While it may include some basic measurements it does not contain the comprehensiveness of an access audit, which requires a thorough review of all state and federal scoping and coverage requirements. An access audit also includes precise measurement of all technical specifications to determine level of compliance.

The NHA reported that one of the most common internal accessibility modifications in their units was the installation of roll-in showers. It was stated that these roll-in showers more often were suggested by the NHA staff than requested by residents or applicants with disabilities. It is important to note that roll-in showers should only be installed when specifically requested by a person or elder with a disability or if mandated by state access code or federal accessibility requirements. Roll-in showers are a good use of limited funds when used for either of these reasons. They are not a good use of funds when they do not address the specific accessibility needs of the individual with the disability. While roll-in showers work well for some individuals with disabilities they can present difficulties for others.

The NHA Board of Commissioners recently approved a reasonable accommodation policy. At the time of this report, the NHA did not have reasonable accommodation written procedures drafted or submitted for approval to the NHA Board of Commissioners. Reasonable accommodation policies and procedures must be provided to all applicants, tenants and their voucher clients. The written policies and procedures must identify the appropriate contact person and their direct telephone number and email address. The reasonable accommodation policies and procedures must also be posted in all NHA developments. It would be advisable to make the policies and procedures available on the NHA web site as well.

The NHA reported that it has a Sec. 504 Plan, which staff are currently updating. The NHA did not specify whether it had a separate ADA Plan or if the Sec. 504 Plan served that capacity as well. It is allowable to have a joint Sec. 504/ADA Plan. NHA staff stated that they are in the process of updating their Sec. 504 plan. The NHA Executive Director has been appointed the de facto Sec. 504/ADA Officer. It would be advisable that the NHA seek input from others such as the Disability Commission, the Fair Housing Committee plus local disability/elder advocates and service providers for the update of the Sec. 504 Plan. Such community support would strengthen the NHA Sec. 504 Plan. Once the Sec. 504 Plan is updated, it should be available to the public and provided to interested parties.

The NHA stated that it files its Public Housing Authority (PHA) Plans with HUD as required. These plans must outline the steps that the PHA intends on taking or has accomplished towards affirmatively furthering fair housing. Affirmatively furthering fair housing (AFFH) are activities that a PHA will engage in to expand equal access to housing opportunity for all the fair housing protected classes. Addressing the needs of persons with disabilities through service delivery and physical accessibility would be a key component of AFFH activities. Establishing an accurate inventory of accessible units and assessing how many are needed within the community is one approach to this. Taking accessibility beyond minimum compliance is another approach. The NHA did not provide any information regarding AFFH activities geared towards persons with disabilities for this report therefore no opinion can be provided. It would be advisable that the NHA seek input from the Disability Commission, the Fair Housing Committee plus local disability/elder advocates and service providers to develop proactive AFFH activities to serve persons with disabilities and their families.

### **Recommendations:**

1. As the NHA updates its Sec. 504 plan it should include an access audit that encompasses scoping & coverage and technical specifications of both its physical plant and its delivery of services. This audit should include Parker House and Jackson Gardens. The access audit should be done by a consultant trained in MAAB, Sec. 504, ADA and FHAA architectural requirements and programmatic service delivery. An access audit is one means to avoid costly compliance monitoring by HUD or the Department of Justice (DOJ) and is an investment toward proactively serving persons with disabilities.
2. Once a Sec. 504 plan update with an access audit to establish a baseline is completed, the NHA should update it on a regular schedule. A five year cycle should be considered.
3. The NHA should develop its reasonable accommodation written procedures by incorporating the information of the HUD-DOJ Joint Statement on Reasonable Accommodations.
4. The hardcopy version of NHA Reasonable Accommodation Policies and Procedures as well as the name and contact information for the Sec. 504/ADA Officer must be provided to all applicants and residents at every interaction they have with the NHA. This would cover the rental voucher program applicants and clients as well.
5. The Reasonable Accommodation Policies & Procedures as well as the name and contact information for the Sec. 504/ADA officer must be posted in a noticeable public place at the administration offices as well as at all sites.

6. All NHA staff should be trained on physical accessibility, service delivery accessibility, reasonable accommodation policies and procedures as well as the Sec. 504 plan. At this point of time, such training should be done by an outside consultant.
7. The NHA should make its Reasonable Accommodation Policies and Procedures available online. Its web site also should identify the Sec. 504/ADA Officer with his/her direct telephone number and e-mail address.
8. The NHA should re-evaluate its standard operational procedure regarding the installation of roll-in showers for all persons identified as having some form of physical disability. These types of showers should be installed only when it will benefit the person with the disability or to meet code compliance.
9. The NHA should make public the steps that it will take or has taken to further affirmatively fair housing into its Five Year plan and report on its progress in its annual action plans as required by HUD.

<b>Category</b>	<b>Recommendation</b>	<b>Primary Party</b>	<b>Secondary Party</b>	<b>Outside Party</b>
<b>Compliance with State and Federal Mandates</b>	Accessibility field demonstration training provided to department staff.	ISD Planning & Development Department, Accessibility Coordinator	Fair Housing Committee, Disabilities Commission, Human Rights Commission	
	Develop new inspection and notification system to review compliance with mandates of Americans with Disabilities Act, Title II & III, Sec. 504 and the Fair Housing Amendments Act for residential projects receiving federal, state or municipal funding that is administered by the City of Newton.	ISD  Planning & Development Department  Accessibility Coordinator	Fair Housing Committee  Disability Commission	
	Develop and implement alleged violation reporting mechanism between the commissions and citizen advisory boards with ISD.	ISD  Accessibility Coordinator	Disability Commission  Fair Housing Committee	
<b>Availability of Accessible Units</b>	Develop self-reporting documents for housing providers seeking City funding that identifies how many accessible units will be provided under MAAB Group 1 & 2, FHAA, Sec. 504, ADA Title II & II and plans to request a waiver of accessibility from MAAB.	Planning & Development Department	Law Department  Accessibility Coordinator	
	Require housing providers in their submitted fair housing marketing plans;	Planning & Development		Housing Providers



Category	Recommendation	Primary Party	Secondary Party	Outside Party
	to provide an accurate number of accessible units, their specific outreach efforts to elder/disability service provider & advocates; placement of advertisements in media that reaches these populations; and proof of listings in Mass Access.	Department		
	Require that housing providers who received city funding demonstrate policies and procedures that will ensure that on-site staff have the correct number of accessible units as well as instructions on how those numbers are to be used for marketing, lotteries and wait list management.	Planning & Development Department		Housing Providers
	Periodically survey housing providers to determine whether accurate numbers of accessible units are being used by on-site staff.	Planning & Development Department		Housing Providers
	Periodically survey the accuracy of information being provided to persons with disabilities and elders in need of accessible housing by housing providers.	Planning & Development Department Accessibility Coordinator	Fair Housing Committee Disability Commission Human Rights Commission	Volunteer testers
	In any land use planning or master plan	Planning &	Law Dept	

Category	Recommendation	Primary Party	Secondary Party	Outside Party
	development, special attention should be paid to whether decisions made will have a negative, disparate impact on the development of accessible housing units.	Development Department  Fair Housing Committee  Community Preservation Act Committee  Planning & Development Committee		
	The City of Newton should participate with the CHAPA Access Committee to develop a workable plan to address code confusion issues.	Fair Housing Committee  Community Preservation Act Committee	ISD  Planning & Development Department  Accessibility Coordinator	CHAPA Access Committee
	Negotiate with housing providers to promote the style of housing that will not create a negative, disparate impact on the creation of accessible housing for persons with disabilities.	Planning & Development Department	Fair Housing Committee  Disability Commission	
<b>Accessibility in Affordable Housing Guidance</b>	The City should maintain detailed records of how the Guidance was applied, and	Design Review Team	Fair Housing Committee	

Category	Recommendation	Primary Party	Secondary Party	Outside Party
	the degree of accessibility that was achieved by the individual projects to assist in the determination of best practices.	Accessibility Coordinator  Planning & Development Department	Disability Commission	
	The Guidance should be updated once best practices are established to provide future projects with successful models.	Design Review Team  Accessibility Coordinator  Planning & Development Department	Fair Housing Committee  Disability Commission	
	Relevant parties should receive training on universal design and visitability concepts.	Design Review Team  ISD  Planning & Development Department  Accessibility Coordinator	Fair Housing Committee  Disability Commission	Consultant who specializes in both concepts
	Provide training to builders, developers, design professionals, housing providers	Planning & Development	Fair Housing Committee	Boston Society of

Category	Recommendation	Primary Party	Secondary Party	Outside Party
	and housing and disability advocates on the Guidance, universal design and visitability.	Department Accessibility Coordinator	Disability Commission	Architects
	Provide information regarding universal design and visitability in the Newton public and school libraries so all community members can better understand and embrace these design concepts.	Accessibility Coordinator	Fair Housing Committee Disability Commission	
<b>Reasonable Accommodation and Reasonable Modification</b>	Establish reasonable accommodation and reasonable modification principles utilizing the principles of the Joint Statements or use the Joint Statements as a measure of compliant polices and procedures.	Planning & Development Department	Fair Housing Committee	
	Mandate that all housing providers requesting or receiving city funds provide their reasonable accommodation and reasonable modification polices and procedures for review.	Planning & Development Department		Housing Providers
	Housing providers who do not meet the City of Newton reasonable accommodation/reasonable modification principles should amend their policies and procedures before funding is released.	Planning & Development Department		Housing Providers
	Mandate that all housing providers requesting or receiving city funds provide	Planning & Development		Housing Providers

Category	Recommendation	Primary Party	Secondary Party	Outside Party
	their reasonable accommodation and reasonable modification policies and procedures online when possible.	Department		
	Provide training to housing providers, advocates, service providers, persons with disabilities and elders.	Planning & Development Department Accessibility Coordinator	The Fair Housing Committee Disability Commission	
	The HUD-DOJ Joint statements should be made available via the Fair Housing Committee's Web site	Planning & Development Department		
<b>ADA-Sec. 504 Plans</b>	Initiate a new planning process to both update its ADA Plan as well as incorporate Sec. 504 requirements	Accessibility Coordinator Fair Housing Committee Disability Commission Inspectional Services Dept	All City Departments	-or- Accessibility consultant experienced with physical and service delivery, communication and staffing under ADA-Sec. 504 regulations
	Adopt an ongoing ADA-Sec. 504 planning process similar to the model used for CDBG planning model of a five-year plan with annual action plans.	Accessibility Coordinator Fair Housing	All City Departments	Persons with Disabilities Elders

Category	Recommendation	Primary Party	Secondary Party	Outside Party
	Extensive public hearings, media outreach and a procedure to provide written comments should be incorporated into this process. Consider smaller, targeted focus groups be used as an alternative way to get needed input.	Committee  Disability Commission  Inspectional Services Department		Advocates  Service Providers  Other Interested Parties
	An ADA/Sec. 504 review should focus on communication, both internal and external. This would encompass review of updating City TTY/TDD equipment, use of the MA Relay system, policy development regarding use of standardized accessible fonts and font size, Web site accessibility, posting of public meeting notices, etc.	Accessibility Coordinator  City Clerk	Disability Commission  Fair Housing Committee	
	ADA/Sec. 504 training on planning and implementation should be provided to all city departments, commissions and citizen advisory boards.	Accessibility Coordinator	Disability Commission  Fair Housing Committee	-or- Accessibility Consultant who has developed Sec. 504/ADA Plans
	The ADA/Sec. 504 Plan must be available to the general public. The Plan also should be made available on the	Accessibility Coordinator		

Category	Recommendation	Primary Party	Secondary Party	Outside Party
	City Web site. It should be available in accessible hardcopy and provided on request. It is advisable that the ADA /Sec. 504 Plan be made available in the public and school libraries.	City Clerk		
	Participate in the Department of Justice Project Civic Access, either through the more involved assessment in conjunction with the DOJ Access Monitors or through the use of the ADA Best Practices Tool Kit for State and Local Governments.	Accessibility Coordinator  Planning & Development Department  Inspectional Service Department  City Clerk  Public Buildings	Disability Commission  Fair Housing Committee	Department of Justice
	The City should contact Swansea, Brookline, Springfield or Barnstable County to discuss their experiences with Project Civic Access.	Accessibility Coordinator	Disability Commission	
<b>ADA Technical Assistance</b>	Work toward making the ADA coordinator a full-time accessibility coordinator position.	Mayor's Office  Disability Commission		

Category	Recommendation	Primary Party	Secondary Party	Outside Party
		ADA Coordinator  Planning & Development Department  Law Department  Fair Housing Committee		
	Increase position responsibilities to provide technical assistance in both a planning and specific answering question capacity.	Mayor's Office  Disability Commission  ADA Coordinator  Planning & Development Department  Law Department		



Category	Recommendation	Primary Party	Secondary Party	Outside Party
	Assist with the establishment of the Disability Commission.	Mayor's Office  Accessibility Coordinator	Planning & Development Department  Law Department	
	Assign position to either Mayor's Office or Law Department.	Mayor's Office		
	Assist Disability Commission to recruit and orient new members.	Accessibility Coordinator		
	Staff Disability Commission.	Accessibility Coordinator		
	Prepare a new comprehensive ADA plan and Sec. 504 plan for city with measurable goals over five-year period with annual updates and reporting modeled on CDBG planning process.	Accessibility Coordinator  Disability Commission  Planning & Development Department	All City Departments  Fair Housing Committee	
	Do annual assessment of accessibility technology needs. This could be done as	Accessibility Coordinator	All City Departments	

Category	Recommendation	Primary Party	Secondary Party	Outside Party
	part of the capital planning process.	Disability Commission		
	Establish accessibility services procedures, policies etc., for City of Newton in general as well as specific to each department.	Accessibility Coordinator Law Department	Disability Commission	
	Report annually to Mayor on the state and progress on accessibility by city departments.	Accessibility Commission Disability Commission		
	Identify, plan and conduct in-service trainings and public trainings on disability issues.	Accessibility Coordinator Disability Commission	Planning & Development Department Fair Housing Committee	
	Assist in investigations involving persons with disabilities.	Accessibility Coordinator	Human Rights Commission	
	Review allegations of ADA noncompliance by City of Newton.	Accessibility Coordinator	Disability Commission	
	Assist in review of allegations of noncompliance in non-City-owned/managed facilities.	Accessibility Coordinator ISD		

Category	Recommendation	Primary Party	Secondary Party	Outside Party
<b>Newton Fair Housing Committee</b>	Seek funding to provide the trainings that are recommended throughout this report.	Fair Housing Committee  Disability Commission  Accessibility Coordinator  Planning & Development Department		
	Establish relationship with the newly formed Disability Commission.	Fair Housing Committee	Disability Commission	
	Receive training on the ADA Titles II & III updated specifications from the Department of Justice.	Fair Housing Committee  Planning & Development Department		
	Receive training on the updated MAAB specifications.	Fair Housing Committee  Planning & Development Department		
	Explore the feasibility and desirability of becoming a HUD-funded Fair Housing Assistance Program. (See FHAP	Fair Housing Committee	Disability Commission	

Category	Recommendation	Primary Party	Secondary Party	Outside Party
	Section.)	Human Rights Commission  Planning & Development Department		
	Discuss with the Boston Fair Housing Commission and the Cambridge Human Rights Commission the impact being a FHAP had on their investigation, education and training efforts.	Fair Housing Committee  Human Rights Commission  Planning & Development Department  Disability Commission		
	Assist in the update of City's Sec. 504 ADA plan.	Accessibility Coordinator  Planning & Development Department	Fair Housing Committee  Disability Commission  All City Departments	
	Seek funding, for follow-up disability audit	Fair Housing	Disability	

Category	Recommendation	Primary Party	Secondary Party	Outside Party
	to determine if things have changed since 2006.	Committee  Planning & Development Department	Commission	
	Consider doing joint fair housing training with the local real estate board for real estates agencies or agents working in Newton.	Fair Housing Committee  Planning & Development Department	Disability Commission	Greater Boston Real Estate Board
	Develop protocols for an accurate reporting of the number of accessible units for projects funded through the City.	Fair Housing Committee  Planning & Development Department		
	Incorporate accessible housing into affirmatively furthering fair housing marketing requirements that go beyond listing accessible units in the Mass Access Registry.	Fair Housing Committee  Planning & Development Department	Disability Commission	
	Research why there have been no design and construction complaints filed with the Newton Human Rights Commission, the MA Commission Against Discrimination & HUD.	Fair Housing Committee  Disability Commission	ISD	Boston Center for Independent Living

Category	Recommendation	Primary Party	Secondary Party	Outside Party
		Planning & Development Department  Accessibility Coordinator		
	Provide training on accessibility design and construction requirements	Fair Housing Committee  Accessibility Coordinator		-or- Accessibility specialist or architect who specialty practice is accessibility
Planning and Development Department	Consider implementing the recommendations establishing and managing a federal accessibility inspection review system as outlined in the ISD section.	Planning & Development Department  ISD	Fair Housing Committee	
	Explore the feasibility and desirability of becoming a HUD-funded Fair Housing Assistance Program. (See FHAP Section)	Planning & Development Department  Fair Housing Committee  Disability Commission		

Category	Recommendation	Primary Party	Secondary Party	Outside Party
		Human Rights Commission		
	Discuss with the Boston Fair Housing Commission and the Cambridge Human Rights Commission the impact being a FHAP had on their investigation, education and training efforts.	Planning & Development Department  Fair Housing Committee  Disability Commission  Human Rights Commission		
	Collaborate to develop a new Sec. 504-ADA plan.	Planning & Development Department  Accessibility Coordinator  Fair Housing Committee  Disability Commission	Law Department	

Category	Recommendation	Primary Party	Secondary Party	Outside Party
	Develop protocols for an accurate reporting of the number of accessible units for projects funded through the City. (See Accessible Units Section.)	Planning & Development Department Fair Housing Committee		
	Incorporate accessible housing into affirmatively furthering fair housing marketing requirements that go beyond listing accessible units in the Mass Access Registry.	Planning & Development Department Fair Housing Committee		
	Establish standards for acceptable reasonable accommodation and reasonable modification polices based on the HUD-DOJ Joint statements (Appendices E&F).	Planning Department	Fair Housing Committee	
	Provide basic information regarding accessibility for persons with disabilities on the Fair Housing Web page.	Planning & Development Department Accessibility Coordinator	Fair Housing Committee	
	Receive training on the updated ADA Title I & II specifications.	Planning & Development Department		



Category	Recommendation	Primary Party	Secondary Party	Outside Party
		Fair Housing Committee		
	Receive training on the updated MAAB specifications.	Planning & Development Department  Fair Housing Committee		
	Establish relationship with the newly formed Disability Commission.	Planning & Development Department		
<b>Human Rights Commission</b>	Explore the feasibility and desirability of becoming a HUD-funded Fair Housing Assistance Program. (See FHAP Section.)	Human Rights Commission  Fair Housing Committee  Disability Commission  Planning & Development Department		
	Discuss with the Boston Fair Housing Commission and the Cambridge Human Rights Commission the impact being a FHAP had on their investigation, education and training efforts.	Human Rights Commission  Fair Housing		

Category	Recommendation	Primary Party	Secondary Party	Outside Party
		Committee  Disability Commission  Planning & Development Department		
	Plan for City of Newton staff to receive investigation training from the HUD Patricia Roberts Harris National Fair Housing Training Academy (NFHTA). (Appendix G).	Planning & Development Department	Human Rights Commission  Fair Housing Committee	
	The Human Rights Commission should develop some formalized process to guarantee that it would always include a Newton Fair Housing Committee member.	Human Rights Commission	Fair Housing Committee	
	Request a representative from the Disability Commission on its Advisory Council.	Human Rights Commission	Disability Commission	
	Provide more educational programs on	Human		

Category	Recommendation	Primary Party	Secondary Party	Outside Party
	disability issues.	Rights Commission  Disability Commission  Accessibility Coordinator		
	Research why there have been no design and construction complaints filed with the Newton Human Rights Commission, the MA Commission Against Discrimination & HUD.	Human Rights Commission  Fair Housing Committee  Disability Commission		
<b>Disability Commission</b>	Implement new commission following the provisions of Section 8J of Chapter 40 of the Massachusetts General Laws.	Mayor's Office  Disability Commission  Accessibility Coordinator  Law Department		

Category	Recommendation	Primary Party	Secondary Party	Outside Party
	Move the Disability Commission to report directly to the Mayor or to the City Law Department. Relocate the accessibility coordinator in this move as well.	Mayor's Office  Disability Commission		
	Expand membership of commission to include other standing positions such as (maintain that majority of seats are for persons with disabilities): a. Architect or accessibility consultant b. Trained community monitor c. Disability service provider d. Employer	Mayor's Office  Disability Commission	Board of Aldermen	
	Seek funding for staffing by a full-time accessibility coordinator.	Disability Commission		
	Assist accessibility coordinator in preparation and review of Sec. 504-ADA plan.	Disability Commission  Fair Housing Committee  Planning & Development Department  Accessibility Coordinator	Law Dept  All City Departments	
	Works closely with Veterans Services to address unmet needs of veterans with	Accessibility Coordinator		

Category	Recommendation	Primary Party	Secondary Party	Outside Party
	disabilities, provide education and do joint advocacy.	Veterans' Service Agent  Disability Commission		
	Organize annual trainings for the general population as well as local businesses/housing and service providers.	Disability Commission  Accessibility Coordinator	Fair Housing Committee  Human Rights Commission	
	Sponsor regular community monitor training with the MA Office on Disability.	Disability Commission  Accessibility Coordinator		MA Office on Disability
	Organize events around significant disability milestones such as ADA anniversary, Disability Employment Month, etc.	Disability Commission  Accessibility Coordinator		
	Maintain active advisory role in the CDBG project recommendation and implementation process.	Disability Commission  Accessibility Coordinator  Planning Department		

Category	Recommendation	Primary Party	Secondary Party	Outside Party
	Call public meetings on specific topics outside the regularly scheduled monthly meetings as needed. For example, a public meeting to discuss accessibility in shopping areas or housing.	Disability Commission		
	Continue new communication relationship with Inspectional Services Department: a. Joint meetings at least 4 times per year. b. Establish two-way reporting procedure regarding allegations of non-compliance.	Disability Commission  Accessibility Coordinator  ISD		
	Develop and conduct advocacy plan.	Disability Commission  Accessibility Coordinator		
	While not required by its ordinance it would be beneficial to its mission by having a representative from the Disability Commission on the Human Rights Advisory Council.	Human Rights Commission  Disability Rights Commission		
	Co-sponsoring educational programs on disability issues.	Disability Commission  Human Rights		

Category	Recommendation	Primary Party	Secondary Party	Outside Party
		Commission Fair Housing Committee Accessibility Coordinator		
	Disability Commission members should receive training on state and federal laws regarding housing accessibility, fair housing, funding and housing program to expand their role in housing.	Disability Commission Fair Housing Committee Accessibility Coordinator		
	As directed in MGL Ch 40 Section 8J, develop working relationships with City departments, commissions and citizen advisory committees for purpose of provision of technical assistance, priority identification and joint problem solving.	Disability Commission Accessibility Coordinator	All City departments	
<b>Public Buildings Department</b>	Collaborate with the development of a new City Sec. 504-ADA plan.	Public Buildings Department Accessibility Coordinator	Disability Commission	
	Designate staff to train on accessibility specifications to assist in day-to-day	Public Buildings		

Category	Recommendation	Primary Party	Secondary Party	Outside Party
	operations.	Department		
	Train all department staff on basic accessibility.	Public Buildings Department	Accessibility Coordinator	
	Staff should receive training on the DOJ updated ADA Title II & III guidelines.	Public Buildings Department		
	Staff should receive training on the current MAAB regulations.	Public Buildings Department		
	Staff should be trained on the new MAAB regulations once released.	Public Buildings Department		
<b>Department of Public Works</b>	Staff should receive training on the new Department of Justice ADA guide technical specification, with a specific focus on auditory traffic signals, tactile warning strips and curb cuts.	Department of Public Works		
	Staff should receive training on the current MAAB regulations.	Department of Public Works		
	Staff should be trained on the new MAAB regulations once released.	Department of Public Works		



<b>Category</b>	<b>Recommendation</b>	<b>Primary Party</b>	<b>Secondary Party</b>	<b>Outside Party</b>
<b>School Department</b>	Re-evaluate periodically and systemically any capital plan that includes accessibility modifications or retrofitting.	School Department	Public Buildings Department	
	Arrange for technical assistance on physical accessibility for large, medium and small projects as well as IEP development through the training of internal staff and/or fee for service consultants.	School Department	ISD Accessibility Coordinator	
	Identify ways that will strengthen the ability to increase accessibility but eliminate bureaucratic procedures that may hinder efficiency.	School Department ISD		
	The updated ADAAG will not cover capital projects until March 2012. Voluntary compliance was allowable as of 9/15/10, therefore it is advisable to follow the updated version.	School Department		
	Staff should receive training on the new Department of Justice ADA Title I, II & III technical specifications.	School Department		
	Staff should receive training on the current MAAB regulations.	School Department		
	Staff should be trained on the new MAAB regulations once released.	School Department		
	<b>Department of Parks and Recreation</b>	Continue the present planning and prioritization process.	Department of Parks and Recreation	
Continue to identify and apply for		Department		

Category	Recommendation	Primary Party	Secondary Party	Outside Party
	additional funding.	of Parks and Recreation		
	The City should explore the creation of a full-time accessibility coordinator to increase technical assistance to further assist Parks and Recreation.	Mayor's Office Disability Commission	Department of Parks and Recreation	
	The updated ADAAG will not cover capital projects until March 2012. Voluntary compliance was allowable as of 9/15/10; therefore it is advisable to follow the updated version.	Department of Parks and Recreation		
	Staff should receive training on the updated ADA Title II & III guidelines.	Department of Parks and Recreation		
	Explore the possibility of staff receiving additional training on the current MAAB regulations.	Department of Parks and Recreation		
	Staff should receive training on the current MAAB regulations.	Department of Parks and Recreation		
	Staff should be trained on the new MAAB regulations once released.	Department of Parks and Recreation		
<b>Office of the City Clerk</b>	Adopt policies and practices that standardize an accessible font and point size for all public notices.	Office of the City Clerk Accessibility Coordinator		

Category	Recommendation	Primary Party	Secondary Party	Outside Party
	Evaluate whether practices of routinely posting notices 48 hours prior to open meetings is creating barriers to participation for persons with disabilities, particularly for persons who are blind or deaf.	Office of the City Clerk  Accessibility Coordinator		
	Simplification of the City Web site to promote greater readability for persons with disabilities.	Office of the City Clerk		
	Once DOJ issues its final ADA rule on Web accessibility, the City should review its Web site for compliance with those standards.	Office of the City Clerk  Accessibility Coordinator		
	Consider using digital signage system for posting all public meeting notices as well as other useful information. Such systems facilitate accessibility and alternate format needs.	Office of the City Clerk  Accessibility Coordinator		
<b>Veterans Department</b>	Provide veterans with information on their housing options.	Veterans Department  Planning & Development Department		Housing Advocates
	Use its local cable access to educate veterans on fair housing, affordable housing and accessibility.	Veterans Department	Fair Housing Committee  Planning &	Housing Advocates

Category	Recommendation	Primary Party	Secondary Party	Outside Party
			Development Department  Disability Commission	
	Meet on a regularly scheduled basis to share information resources, identify priorities that need to be addressed, and develop a stronger identification of needs for disabled veterans and other persons with disabilities for City funding.	Veterans Department	Disability Commission  Fair Housing Committee	
	Attend City-sponsored trainings on fair housing and accessibility.	Veterans Department		
	Participate in any outreach for City-sponsored trainings on fair housing and accessibility so veterans can participate.	Veterans Department  Fair Housing Committee		
<b>Election Commissions</b>	Provide direct and immediate access to deaf individuals on Election Day, either through use of Mass Relay or through a department TDD.	Elections Commission		
	Accessibility of polling sites should continue to be a major concern through the re-precinating process.	Elections Commission		

Category	Recommendation	Primary Party	Secondary Party	Outside Party
		Accessibility Coordinator		
	Provide training on how to assist persons with cognitive disabilities to vote to poll workers.	Elections Commission Accessibility Coordinator		
	Provide training on assisting voters with disabilities more frequently for poll workers.	Elections Commission Accessibility Coordinator		
<b>Newton Housing Authority</b>	Conduct access audit of all NHA properties to evaluate what the true level of accessibility is as well as determine code compliance. Audit should include the physical premises and service delivery.	Newton Housing Authority		Consultant trained in MAAB, Sec. 504, ADA and FHAA design & construction as well as service delivery
	Update Sec. 504 plan on regular basis modeled on the capital fund plan that is part of the federal PHA plan. Input from the Disability Commission, the Fair Housing Committee plus local disability/elder advocates and service providers should be sought for this	Newton Housing Authority	Fair Housing Committee Disability Commission	Disability advocates & services providers Elder advocates &

Category	Recommendation	Primary Party	Secondary Party	Outside Party
	update.			service providers
	Develop reasonable accommodation procedures utilizing the HUD-DOJ Joint Statement on Reasonable Accommodations.	Newton Housing Authority		
	A hardcopy version of the Reasonable Accommodation Policies & Procedures as well as the name and direct contact information for the Sec. 504/ADA Officer should be provided to all applicants and residents at every interaction they have with the NHA. This would cover the Sec. 8 Program applicants and clients as well.	Newton Housing Authority		
	The Reasonable Accommodation Policies & Procedures as well as the name and contact information for the Sec. 504/ADA should be posted in a noticeable public place at the administration offices as well as at all sites	Newton Housing Authority		
	Train all NHA staff on physical accessibility, service delivery accessibility and reasonable accommodation policies and procedures as well as the transition plan. At this point of time, such training should be done by an outside consultant.	Newton Housing Authority		Consultant trained in MAAB, Sec. 504, ADA and FHAA design & construction as well as

Category	Recommendation	Primary Party	Secondary Party	Outside Party
				service delivery
	Reasonable accommodation policies and procedures should be made available online. The Web site also should identify a contact person with his/her direct telephone number and e-mail address.	Newton Housing Authority		
	Re-evaluate its standard operational procedure of installing roll-in showers for all persons identified as having some form of physical disability.	Newton Housing Authority		Accessibility Consultant
	Identify the steps that it will take to further affirmatively fair housing into its Consolidated Plan and report on its progress in its annual Action Plans. Input from the Disability Commission, the Fair Housing Committee plus local disability/elder advocates and service providers should be sought.	Newton Housing Authority	Fair Housing Committee Disability Commission	Disability advocates & services providers  Elder advocates & service providers

# **Appendix A**

## **List of Key Informant Interviews**



## **Key Informant Interviews:**

### **City Departments**

ADA Coordinator  
City Clerk  
Department of Public Works  
Human Rights Commission staff  
Inspectional Services Department  
Parks & Recreations Department  
Planning and Development Department  
Public Buildings Department  
School Department  
Veterans Services  
Elections Commission

### **Board of Alderman**

### **Commissions and Citizen Advisory Boards**

Community Preservation Committee  
Fair Housing Committee  
Mayors Committee for Persons with Disabilities  
Planning and Development Board

### **Housing Providers**

National Development  
Newton Community Development Foundation  
Newton Housing Authority

### **Miscellaneous:**

Dept. of Housing and Community Development  
Dept. of Housing and Urban Development  
Mass Access  
Mass Housing

# Appendix B

## MBHP Scoping & Coverage Matrix

Law	Massachusetts Architectural Access Board & Regulations 521CMR	Fair Housing Amendments Act of 1988	Sec. 504 of the Rehabilitation Act of 1973	Americans with Disabilities Act: Title II: Either ADAAG or UFAS can be used	Americans with Disabilities Act: Title III: ADAAG only
<b>General Scoping/coverage</b>	<p>New construction of multifamily housing of 3 or more units built after 9/1/96</p> <ol style="list-style-type: none"> <li>In buildings with an elevator all units are covered.</li> <li>In buildings without an elevator only ground floor units (first level of residential units) are covered.</li> <li><b>9.3 GROUP 1 DWELLING UNITS</b> In <i>multiple dwellings</i>, for which building permits for new <i>construction</i> are issued on or after September 1, 1996, that are for rent, hire, lease or sale and that are equipped with an elevator, all <i>dwelling units</i> must be constructed as <i>Group 1 Dwelling Units</i>, except those covered in <b>521 CMR 9.4, Group 2 Dwelling Units</b> <p><b>9.4 GROUP 2 DWELLING UNITS</b> In <i>multiple dwellings</i> that are for rent, hire, or lease (but not for sale) and contain 20 or more units, at least 5% of the <i>dwelling units</i> must be <i>Group 2A</i> units. <i>Group 2A</i> units must comply with <b>521 CMR 9.5, Dwelling Unit Interiors</b>; and <b>521 CMR 44.00: GROUP 2 BATHROOMS</b>; and <b>521 CMR 45.00: GROUP 2 KITCHENS</b>; and <b>521 CMR 47.00: GROUP 2 BEDROOMS</b>.</p> <p>Existing dwellings of 12 or more units for rent, hire or lease, undergoing major alteration, renovation, reconstruction</p> <ol style="list-style-type: none"> <li>12 or more units, public areas must be accessible</li> <li>20 or more units, 5% must be designed as Group 2A</li> </ol> </li></ol>	<p>Multifamily buildings of 4 or more first occupied after 3/13/91</p> <ol style="list-style-type: none"> <li>In buildings with a common use elevator all units are covered.</li> <li>In buildings without a common use elevator only ground floor units (first level of residential units) are covered.</li> </ol>	<p><b>Note:</b> Each federal agency promulgates its own Sec. 504 regulations. Below references the Sec. 504 regulations of HUD only for residential units.</p> <p>New housing construction built after 7/11/88, multi-family units, built by recipients of direct federal funding.</p> <ol style="list-style-type: none"> <li>Five percent, but not less than one unit, must be accessible for persons with physical disabilities.</li> <li>An additional 2% must be accessible for persons with vision and/or hearing loss.</li> <li>For single family detached or duplex family dwellings where the occupancies are primarily permanent in nature and not classified as institutional.</li> </ol>	<p><b>Note:</b> The current version of ADAAG does not contain technical specifications for residential units so most design professionals and builders use UFAS.</p> <p><b>ADA Sec.36.401 New construction.</b></p> <p>(a) General.</p> <p>(1) Except as provided in paragraphs (b) and (c) of this section, discrimination for purposes of this part includes a failure to design and construct facilities for first occupancy after January 26, 1992, that are readily accessible to and usable by individuals with disabilities.</p> <p>-or-</p> <p><b>UFAS 4.1.4 (11)</b> 5 percent of the total, or at least one unit, whichever is greater, in projects of 15 or more dwelling units, or as determined by the appropriate</p>	<p>Applies to common use areas in residential settings if used as a public accommodation such as a leasing office.</p> <p><b>ADA Sec.36.401 New construction.</b></p> <p>(a) General.</p> <p>(1) Except as provided in paragraphs (b) and (c) of this section, discrimination for purposes of this part includes a failure to design and construct facilities for first occupancy after January 26, 1992, that are readily accessible to and usable by individuals with disabilities</p>
<b>Rehab and/or conversion of use</b>	<p>9.2.2</p> <p><i>Renovation</i> and reuse of dwelling units is subject to <b>521 CMR 9.4, Group 2 Dwelling Units</b> through <b>521 CMR 9.5, Dwelling Unit Interiors</b> provided the work being performed, in a three year period, exceeds 30% of the <i>full and fair cash value of the building</i> (See <b>521 CMR 3.3.2</b>). Work performed to public use and</p>	Not covered	<ol style="list-style-type: none"> <li>Substantial rehabilitation is covered in buildings of 15 or more units when the alterations cost 75% of the replacement cost of the building.</li> <li>Non substantial alterations to units and/or common use areas must be made accessible to the greatest feasible extent. If the entire unit is</li> </ol>	<b>ADAAG 4.1.5 Accessible Buildings: Additions.</b> Each addition to an existing building or facility shall be regarded as an alteration. Each space or element added to the existing building or facility shall comply with the applicable provisions of <a href="#">4.1.1</a> to <a href="#">4.1.3</a> , Minimum Requirements (for New Construction)	<b>ADAAG 4.1.5 Accessible Buildings: Additions.</b> Each addition to an existing building or facility shall be regarded as an alteration. Each space or element added to the existing building or facility shall comply with the applicable provisions of <a href="#">4.1.1</a> to <a href="#">4.1.3</a> , Minimum Requirements (for New Construction) and the applicable technical specifications of section 4 and the special

Law	Massachusetts Architectural Access Board & Regulations 521CMR	Fair Housing Amendments Act of 1988	Sec. 504 of the Rehabilitation Act of 1973	Americans with Disabilities Act: Title II: Either ADAAG or UFAS can be used	Americans with Disabilities Act: Title III: ADAAG only
	common use areas however, is subject to all of <b>521 CMR 3.3</b> .		being altered, the unit must then be made fully accessible.	Construction) and the applicable technical specifications of section 4 and the special application sections. Each addition that affects or could affect the usability of an area containing a primary function shall comply with <a href="#">4.1.6(2)</a> .  -or-  <b>4.1.6 ACCESSIBLE BUILDINGS. ALTERATIONS</b>  (c) If alterations of single elements, when considered together, amount to an alteration of a space of a building or facility, the entire space shall be made accessible. (d) No alteration of an existing element, space, or area of a building shall impose a requirement for greater accessibility than that which would be required for new construction.	application sections. Each addition that affects or could affect the usability of an area containing a primary function shall comply with <a href="#">4.1.6(2)</a> .  -or-  <b>4.1.6 ACCESSIBLE BUILDINGS. ALTERATIONS</b>  (c) If alterations of single elements, when considered together, amount to an alteration of a space of a building or facility, the entire space shall be made accessible. (d) No alteration of an existing element, space, or area of a building shall impose a requirement for greater accessibility than that which would be required for new construction.
<b>Multilevel Units</b>	9.4.2 EXCEPTION FOR TOWNHOUSES: When 5% of the total number of units required to be accessible includes townhouses, they shall comply by any of the following means: a. substitute a fully accessible flat of comparable size, amenities, etc.; b. provide space for the future installation of a wheelchair lift to access either upper or lower level of townhouse. c. provide space for the future installation of a residential elevator to access either the upper or lower level of the townhouse.	a. Multistory units without access to an elevator are not covered. b. Multistory units with private internal elevators must meet Requirements 1-7. c. Multistory units in a common use elevator building must have the elevator serve the primary entrance level of the unit. The primary entrance level must meet Regs. 3-7.	No specific scoping and coverage for multi-level units, however the standard requirements for multifamily projects apply to multilevel units.	The dispersion rule creates an exception for single floor units in development with multilevel units.	a. Dormitories: Same as traditional multifamily residential units b. Nursing homes, assisted living units, etc. use the scoping and coverage of UFAS or ADAAG institutional units c. Any residential unit(s) or project that provides housing for less than 30 days uses the scoping and coverage of UFAS transient housing.
<b>Home Ownership Units</b>	Group 1 units are covered but Group 2 are not.	a. Single family detached home ownership units are not covered. b. Condo units in multi-	According to UFAS, In federally assisted homeownership projects, accessibility is determined by the buyer. However some	According to UFAS, In federally assisted homeownership projects, accessibility is determined by the buyer.	N/A

<b>Law</b>	<b>Massachusetts Architectural Access Board &amp; Regulations 521CMR</b>	<b>Fair Housing Amendments Act of 1988</b>	<b>Sec. 504 of the Rehabilitation Act of 1973</b>	<b>Americans with Disabilities Act: Title II: Either ADAAG or UFAS can be used</b>	<b>Americans with Disabilities Act: Title III: ADAAG only</b>
		family buildings of 4 or more units first constructed after 3/13/91 <b>are</b> covered	of the HUD Handbooks indicate otherwise. At this time, conclusive scoping and coverage information on homeownership units can not be provided.		
<b>Non-multifamily housing: dormitories, assisted living, transitional living, shelters</b>	Except for assisted living, all are considered transit lodging under <b>521 CMR 8.00: TRANSIENT LODGING FACILITIES.</b>	Scoping and coverage is the same as standard multi-family residential buildings	<ul style="list-style-type: none"> <li>a. Dormitories: Same as traditional multifamily residential units</li> <li>b. Nursing homes, assisted living units, etc. use the scoping and coverage of UFAS institutional units</li> <li>c. Any residential unit(s) or project that provides housing for less than 30 days uses the scoping and coverage of UFAS transient housing.</li> </ul>	Hotels, motels, inns, boarding houses, dormitories and resorts are considered transient lodging not residential multifamily.	N/A for traditional multi-family units but does contain specifications for medical care facilities such as nursing homes and transient lodging.
<b>Units for Persons with Hearing and/or Vision Loss</b>	2% of the total number of <i>dwelling units</i> in the complex or project, but not less than one	No design and construction requirement specifications. Addressed through reasonable modification provision.	An additional 2% must be accessible for persons with vision and/or hearing loss	No residential design and construction requirement specifications. Addressed through reasonable modification provision.	No residential design and construction requirement specifications. Addressed through reasonable modification provision.
<b>Provision for Variance Request</b>	Yes	<b>No</b>	No	No	No
<b>Access Standard</b>	Massachusetts Regulations 521 CMR	Safe Harbors  Fair Housing Guidelines  ANSI A117.1 1986 ANSI in conjunction with FHAA, HUD regulations and Guidelines.  CABO/ ANSI A117.1 1992 in conjunction with FHAA, HUD regulations and Guidelines.  ICC/ A117.1 1998 in conjunction with FHAA, HUD regulations and Guidelines.  Fair Housing Act Design Manual  Code Requirements for Housing Accessibility 2000 (CRHA)  International Building Code (IBC) 2000 in conjunction with the 2001 Supplement  International Building Code (IBC) 2003	Uniform Federal Accessibility Standards	ADA Accessibility Guidelines or UFAS	ADA Accessibility Guidelines

<b>Law</b>	<b>Massachusetts Architectural Access Board &amp; Regulations 521CMR</b>	<b>Fair Housing Amendments Act of 1988</b>	<b>Sec. 504 of the Rehabilitation Act of 1973</b>	<b>Americans with Disabilities Act: Title II: Either ADAAG or UFAS can be used</b>	<b>Americans with Disabilities Act: Title III: ADAAG only</b>
		International Building Code (IBC) 2006 ANSI A117.1 2003			
<b>Responsible Government Agency</b>	Massachusetts Architectural Access Board (MAAB)	Department of Housing & Urban Development (HUD)	Department of Housing & Urban Development (HUD)	Department of Justice	Department of Justice

Developed By MBHP 09/09

# Appendix C

## Planning Department Scoping & Coverage Tool

**Civil Right Laws: Scoping for proposed CDBG and HOME-funded affordable housing development projects 8.11.10**

**Part 1: Background**

Uses of Newton CDBG and HOME funds	Applicable state and federal fair housing laws	Presidential Executive Orders referenced in our legal documents	Applicability of principal fair housing laws to project scoping
<p><u>Predevelopment costs:</u> CDBG and HOME-eligible. The City has provided both CDBG and HOME funding for soft costs (e.g. 192 Lexington Street).</p> <p><u>Acquisition/mortgage reduction:</u> CDBG and HOME-eligible for the acquisition of buildings or land for the development of affordable rental or for sale units. An eligible acquisition activity may also be in the form of taking out or reducing an existing first mortgage.</p> <p><u>Rehabilitation:</u> CDBG and HOME eligible but generally, the City only provides assistance for rehabilitation if it is part of a larger project that also includes acquisition/mortgage reduction.</p> <p><u>New construction:</u> HOME-eligible for rental and for sale ownership housing.</p>	<p>Title VIII of the Civil Rights Act of 1968, as amended</p> <p>Title VI of the Civil Rights Act of 1964</p> <p>Sec. 504 of the Rehabilitation Act of 1973 (Sec. 504)</p> <p>Sec. 109 of Title I of the Housing and Community Development Act of 1974</p> <p>Title II of the Americans with Disabilities Act of 1990 (ADA)</p> <p>Title I of the Americans with Disabilities Act(ADA)</p> <p>Architectural Barriers Act of 1968</p> <p>MA Architectural Access Board and regulations at 521 CMR.</p>	<p>E.O. 11063: Prohibits discrimination in the sale, leasing, rental, or other disposition of properties and facilities owned or operated by the federal government or provided with federal funds.</p> <p>E.O. 11246: Prohibits discrimination in federal employment because of race, color, religion, sex, or national origin.</p> <hr/> <p><i>Not referenced in 24 CFR 570 (CDBG) or 24 CFR 24 (HOME) but included in fair housing-related Presidential Executive Orders:</i></p> <p>E.O. 12892: Requires affirmatively furthering fair housing in all federal programs and activities related to housing and urban development.</p> <p>E.O. 13166: Improves access to federally conducted and federally assisted programs and activities for persons whose primary language is other than English.</p> <p>E.O. 13217: Requires that persons with disabilities are not excluded from community settings whenever appropriate.</p>	<p><b>Fair Housing Act</b>, as amended, includes persons with disabilities as a protected class and applies design and construction accessibility requirements to certain housing developed with private or public (federal) funds.</p> <p><b>Sec. 504 of the Rehabilitation Act of 1973</b> prohibits discrimination based on disability in any program or activity receiving federal financial assistance.</p> <p><b>Title II of the ADA</b> prohibits discrimination based on disability in programs, services, and activities provided or made available by public entities.</p> <p><b>Title III of the ADA</b> prohibits disability discrimination in places of public accommodation, such as management offices, and social services establishments where services may be offered in connection with housing like homeless shelters, transitional housing, and permanent supportive housing.</p>



**Part 2: Section 504 and the Fair Housing Act**

Sec. 504 summary and relevant sections	Applicability of Sec. 504 to scoping affordable housing development projects	Applicability of the Fair Housing Act to scoping affordable housing development projects
<p><b>Section 504 applies to all directly federally-assisted newly constructed housing of <u>5 or more units</u>, substantially rehabilitated housing of <u>15 or more units</u>, and other rehabilitated housing of <u>5 or more units</u>. The sections of CFR 24 Part 8 that are relevant to scoping housing development projects in Newton are:</b></p> <p><b>Sec. 8.22 New construction–housing facilities</b></p> <p><b>Sec. 8.26 Distribution of accessible dwelling units</b></p> <p><b>Sec. 8.29 Homeownership programs</b></p> <p><b>Sec. 8.32 Accessibility standards (See # Uniform Federal Accessibility Standards or UFAS)</b></p>	<p><b>Refer to Sec. 504 of the Rehabilitation Act of 1973</b> with implementing regulations at 24 CFR Part 8: “Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development,” and in particular, <b>24 CFR Part 8 Subpart C—Program Accessibility</b></p> <p><b>Sec. 8.22</b> New construction–housing facilities</p> <p><b>Sec. 8.23</b> Substantial alterations of existing housing facilities (<u>projects that have 15 or more units</u>) and other alterations to multifamily projects with 5 or more units. Under this section, an alteration (or rehabilitation/renovation) is considered “substantial” when the cost of the alteration is 75% or more of the replacement cost of the completed property [See 24 CFR 8.23(a)]. Replacement cost is the current cost of construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the (1) cost of land, (2) demolition, (3) site only improvements, (4) non-dwelling facilities, and (5) administrative costs for project development activities.</p> <p><b>Sec. 8.24</b> Existing programs</p> <p><b>Sec. 8.26</b> Distribution of accessible dwelling units</p> <p><b>Sec. 8.27</b> Occupancy of accessible dwelling units</p> <p><b>Sec. 8.29</b> Homeownership programs</p> <p><b>Sec. 8.32</b> Accessibility standards (see UFAS)</p>	<p><b>The Fair Housing Act applies to multifamily buildings with 4 or more units first occupied after 3/13/91.</b></p> <p>In buildings with a common use elevator, all units are covered. In buildings without a common use elevator, only ground floor units (e.g. first level of residential units above grade level) are covered.</p> <p>The FHA is not triggered by rehabilitation or reuse/conversion activities.</p> <p>The FHA does not apply to single family detached units.</p> <p>Condo units in multifamily buildings of 4 or more units <b>first occupied</b> after 3/13/91 must comply with the FHA.</p> <p>The FHA requires property owners to permit reasonable modifications to rental units and public areas in order to provide “full enjoyment” of that unit to a disabled tenant (s) or potential tenants. Where public funds are involved, an owner must pay for the modifications. Under M.G.L 151B, Sec. 4 “Unlawful Practices”, if a building or development has <b>under 10</b> units or is <b>not receiving government assistance</b>, then the person making the request assumes all costs. If there are 10 or more contiguous units, or the building/development receives government subsidies, the housing provider assumes all costs.</p>

Part 3: Accessible design and construction

Applicability of access design requirements to scoping housing development projects	MA Architectural Access Board (AAB)	Americans with Disabilities Act	Fair Housing Act (FHA)	Uniform Federal Accessibility Standards (UFAS)
<p>CDBG and HOME must comply with 521 CMR, Sec. 504, FHA and ADA. Where conflicts occur among the standards, the requirement that provides the greatest access prevails.</p> <ol style="list-style-type: none"> <li>1. MA Architectural Access Board and Regulations 521 CMR (State Building Code)</li> <li>2. Uniform Federal Accessibility Standards (UFAS), as referenced by Sec. 504 of the Rehabilitation Act of 1973</li> <li>3. 24 CFR 100.25 Fair Housing Act (FHA) Fair Housing Accessibility Guidelines and Fair Housing Act Design Manual: A Manual to Assist Designers and Builders in Meeting the Accessibility Requirements of the Fair Housing Act or any of the other HUD designated Safe Harbors</li> <li>4. Appendix A to 26 CFR Part 36-ADA Standards for Accessible Design (ADAAG), as referenced in the ADA can be used for both Title II &amp; Title III. (Title III Generally, only applies to public accommodation such as leasing or the sales offices.)</li> </ol>	<p><b>New construction:</b> New construction of “multiple dwellings” for which building permits for new construction are issued on or after 9/1/96. (Note: A “multiple dwelling” is defined as a “...residential facility for hire, rent, lease, or sale containing 3 or more dwelling units in a building.” A “residential facility” is a building or buildings consisting of dwelling units which provides complete and independent living accommodations.) In buildings with an elevator, all dwelling units must comply. In buildings without an elevator, only residential units on the ground floor, defined as the first level of residential units above grade must comply.</p> <p><b>Renovation and reuse</b> of dwelling units that are converted, renovated, reconstructed, altered or remodeled for residential use after 9/1/96 if <u>work in a 3-year period exceeds 30% of the fair cash value of the building</u>. If the &gt;30% requirement applies, then multiple dwellings that are for rent, hire, or lease (but not for sale) and contain 20 or more units must comply. In this case, 5% of the dwelling units must comply with requirements related to interiors, bathrooms, kitchens and bedrooms.</p> <p><b>Public and common use areas:</b> Existing buildings of 12 or more units; new construction of 3 or more units.</p>	<p><b>Title II:</b> In multi-family buildings of 15 units or more, 5% or at least one unit must be accessible if funded by state or local funding. Refer to ADA Accessibility Guidelines or UFAS.</p> <p><b>UFAS:</b> <i>Rehabilitation</i> is covered in buildings of 15 or more units when the alterations cost 75% of the replacement of the building. <i>Alterations to units and/or common use areas</i> must be made accessible to the greatest extent feasible. If the entire unit is being altered, the unit must be made fully accessible. According to UFAS, in federally-assisted homeownership projects, accessibility is determined by the buyer.</p> <p><b>Title III:</b> Applies to common use areas in residential settings if used as a public accommodation such as a leasing office.</p> <p>There are no residential design and construction requirement specifications in common use areas of residential settings. Accessibility addressed through reasonable accommodation provision.</p>	<p>The Fair Housing Act (FHA) applies to new construction of rental and for sale buildings with 4 or more units in a building first occupied by 3/13/91. All units must be accessible in buildings with elevators. In buildings without an elevator, only the units on the ground floor must be accessible. (First level residential units above grade.)</p> <p>The FHA establishes 7 design and construction accessibility requirements:</p> <p>Accessible entrance on an accessible route; accessible public and common use areas; usable doors; accessible route into and through the unit; accessible light switches, electrical outlets, thermostats and environmental controls; reinforced walls in bathroom; and usable kitchens/bathrooms.</p> <p>The most applicable “safe harbor” for access standards for Newton scoping is the <i>Fair Housing Accessibility Guidelines</i> and the <i>Fair Housing Act Design Manual: A Manual to Assist Designers and Builders in Meeting the Accessibility Requirements of the Fair Housing Act</i>.</p>	<p>The Uniform Federal Accessibility Standards (UFAS)—found at Sec. 8.32 in Sec. 504 of the Rehabilitation Act--were developed to standardize the accessible design standards that are required for federally-assisted projects. UFAS applies to all rentals and for sale projects with 15 or more units. UFAS is similar to but not the same as 521 CMR.</p> <p>Conformance with UFAS meets the requirements of sections 8.21, <b>8.22</b>, 8.23, 8.25 and <b>8.29</b> of Sec. 504.</p> <p>UFAS applies to both rental and for sale projects. Under UFAS, <u>5%</u> of the total units or at least one unit, whichever is greater, must be accessible for persons with mobility impairments and 2% of the total units, but not less than one unit, must be accessible to persons with hearing and vision impairments.</p>

**Civil Right Laws: Scoping for proposed CDBG and HOME-funded affordable housing development projects 8.11.10**

**Part 4: Scoping**

Scoping : Questions for staff to ask	Scoping for acquisition/mortgage write down of existing first mortgage (only)	Scoping for rehabilitation (only)	Scoping for new construction (only)
<p>1. What is the proposed use(s) of federal funds? Does the project include new construction? Rehabilitation? Acquisition?</p> <p>2. If federal funds will assist with rehabilitation, what is the estimated dollar value of the rehabilitation?</p> <p>3. What is the extent of the rehabilitation? Will it consist of replacement of the kitchen, bath, and entry? Under Sec. 504, for other alterations in projects with 5+ units, if the alteration is to an entire unit, e.g., if it involves the kitchen, bath, and entry, then the entire unit must be made accessible until at least 5% of the units are accessible to people with mobility impairments.</p> <p>4. What type of housing is proposed? Rental? For sale?</p> <p>5. What are the total number of units in the project?</p> <p>6. If the developer is proposing to acquire and/or rehabilitate an existing building, was the building first occupied after 3/13/91? How many units are in the existing building?</p> <p>7. Are there any public and common use areas or social services offered in connection with the housing (existing or proposed)?</p> <p>8. What is the source of funding?</p>	<p>1. Land for the development of new construction units (rental or for sale units).</p> <ul style="list-style-type: none"> <li>• Sec. 504: Sec. 8</li> <li>• 521 CMR: Sec. 9, Sec. 10</li> </ul> <p>2. An existing rental property that will retain its current use (no rehabilitation—although, this is unlikely based on past experience).</p> <ul style="list-style-type: none"> <li>• Fair Housing Act if there 4 or more units constructed for first occupancy after 3/13/1991.</li> <li>• In all circumstances, Section 504 rules for existing housing, including a transition plan.</li> <li>• Reasonable modifications policies for the owner to make modifications at the owner’s expense for publicly assisted units, and properties with 10+ units under Chapter 151B.</li> <li>• Reasonable; accommodation polices to handle requests for waiver or changes in the housing provider’s policies, practices or services.</li> </ul> <p>3. An existing rental unit that will be converted into a for sale unit.</p> <ul style="list-style-type: none"> <li>• 521 CMR: Sec. 9.2.1 if building permit for construction was issued prior to 9/1/96</li> <li>• Title VIII if constructed after 3/13/1991.</li> </ul>	<p>1. <b>521 CMR:</b> MA Architectural Access Board: Specifically refer to Multiple Dwellings Section 9.</p> <p>2. <b>Sec. 504:</b> <u>Sec. 8.23:</u> Alterations of existing facilities applies to projects with 15 or more units and the cost of the alterations is 75% or more of the replacement cost of the completed housing facility. Other alterations of projects with 5+ units.</p>	<p>1. <b>521 CMR:</b> MA Architectural Access Board: Specifically refer to Multiple Dwellings 9.1-9.4.</p> <p>2. Under <b>Sec. 504:</b> <u>Sec. 8.22:</u> New construction/interpreted by HUD to apply to <i>rental</i> multifamily projects.* Applies to projects of 5 or more units. A minimum of 5% of the units in the project, but not less than 1 unit, accessible to tenants with mobility impairments; 2%, but not less than 1 unit, accessible to individuals with vision and/or hearing impairments.</p> <p><u>Sec. 8.29:</u> New construction/<i>for sale</i></p> <p>*There is ambiguity over the interpretation of 8.22 and it is the City’s intent to require a higher level of accessibility than what is required under Sec. 504.</p>

# **Appendix D**

## **Guidance on Accessibility in Affordable Housing**

## **ACCESSIBILITY IN AFFORDABLE HOUSING**

### **GUIDELINES**

The City of Newton is committed to ensuring that persons of all ages and abilities can participate in affordable housing opportunities without barriers that limit their access to this valuable resource. In its efforts to expand the stock of affordable housing and secure barrier-free use by its residents and to assure that Newton is a diverse and welcoming community, the City of Newton encourages developers who seek public funds for affordable housing to exceed the minimum legal requirements for accessibility applicable to the program from which funding is sought.

These guidelines will be reevaluated annually to ensure that the goal of producing more units of accessible affordable housing is being met and to reaffirm the City's commitment to principles of equality and inclusion in housing choice in order to meet identified local needs and goals.

### **PROCESS**

The following steps will be taken to publicize these guidelines and encourage applicants to enhance the accessibility of their projects to the extent that it is financially feasible:

1. The City will post its guidelines on the Community Preservation and Housing Development sections of the Planning and Development Department pages on the City website.
2. The guidelines will also be included in the project application form and/or packet, along with some ideas for accessibility enhancements.
3. Applicants will be asked to meet with the City's Development Review Team (DRT) early in the design/development process; the DRT is an existing team of City staff members from several departments who provide feedback and direction to applicants relative to applicable laws and policies. The team will advise applicants of the City's accessibility in affordable housing guidelines, will assess the suitability of proposed sites for accessible and affordable housing, and will help them to identify ways to enhance accessibility features appropriate to a site and/or structure. A member of the Mayor's Committee for People with Disabilities will be invited to attend DRT meetings when affordable housing proposals are reviewed.
4. Accessibility features will be listed in the project application. The Planning and Development Department's staff memo to the review bodies will include the developers' efforts to maximize the accessibility of their projects.

# Appendix E

## HUD-DOJ Joint Statement on Reasonable Accommodation



U.S. DEPARTMENT OF JUSTICE  
CIVIL RIGHTS DIVISION



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.  
May 17, 2004

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**JOINT STATEMENT OF  
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
AND THE DEPARTMENT OF JUSTICE**

***REASONABLE ACCOMMODATIONS UNDER THE  
FAIR HOUSING ACT***

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**Introduction**

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act<sup>1</sup> (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.<sup>2</sup> One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.<sup>3</sup> HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to

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<sup>1</sup> The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.

<sup>2</sup> The Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

<sup>3</sup> 42 U.S.C. § 3604(f)(3)(B).

reasonable accommodations.<sup>4</sup>

## **Questions and Answers**

### **1. What types of discrimination against persons with disabilities does the Act prohibit?**

The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them<sup>5</sup> and from treating persons with disabilities less favorably than others because of their disability. The Act also makes it unlawful for any person to refuse “to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling.”<sup>6</sup> The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations. In addition, in certain circumstances, the Act requires that housing providers allow residents to

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<sup>4</sup> Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability and require recipients of federal financial assistance to provide reasonable accommodations to applicants and residents with disabilities. Although Section 504 imposes greater obligations than the Fair Housing Act, (*e.g.*, providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504. See U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2002-01(HA) ([www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf](http://www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf)) and “Section 504: Frequently Asked Questions,” ([www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118](http://www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118)).

<sup>5</sup> The Fair Housing Act’s protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities 42 U.S.C. § 3604(f)(1)(B), 42 U.S.C. § 3604(f)(1)(C), 42 U.S.C. § 3604(f)(2)(B), 42 U.S.C. § (f)(2)(C). See also H.R. Rep. 100-711 – 24 (reprinted in 1988 U.S.C.A.N. 2173, 2184-85) (“The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.”). *Accord*: Preamble to Proposed HUD Rules Implementing the Fair Housing Act, 53 Fed. Reg. 45001 (Nov. 7, 1988) (citing House Report).

<sup>6</sup> 42 U.S.C. § 3604(f)(3)(B). HUD regulations pertaining to reasonable accommodations may be found at 24 C.F.R. § 100.204.



make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling.<sup>7</sup> With certain limited exceptions (*see* response to question 2 below), the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

## **2. Who must comply with the Fair Housing Act's reasonable accommodation requirements?**

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. *See e.g.*, City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 703, 710 (D. Md. 2001), aff'd 2002 WL 2012545 (4<sup>th</sup> Cir. 2002). Under specific exceptions to the Fair Housing Act, the reasonable accommodation requirements of the Act do not apply to a private individual owner who sells his own home so long as he (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings. The reasonable accommodation requirements of the Fair Housing Act also do not apply to owner-occupied buildings that have four or fewer dwelling units.

## **3. Who qualifies as a person with a disability under the Act?**

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

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<sup>7</sup> This Statement does not address the principles relating to reasonable modifications. For further information see the HUD regulations at 24 C.F.R. § 100.203. This statement also does not address the additional requirements imposed on recipients of Federal financial assistance pursuant to Section 504, as explained in the Introduction.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree."

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.<sup>8</sup> This list of major life activities is not exhaustive. *See e.g., Bragdon v. Abbott*, 524 U.S. 624, 691-92 (1998)(holding that for certain individuals reproduction is a major life activity).

#### **4. Does the Act protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others?**

No, juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by the Act. Similarly, while the Act does protect persons who are recovering from substance abuse, it does not protect persons who are currently engaging in the current illegal use of controlled substances.<sup>9</sup> Additionally, the Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

#### **5. How can a housing provider determine if an individual poses a direct threat?**

The Act does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (*e.g.*, current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. Consequently, in evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (*i.e.*, a significant risk of substantial harm). In such a situation, the provider may request that the individual document

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<sup>8</sup> The Supreme Court has questioned but has not yet ruled on whether "working" is to be considered a major life activity. *See Toyota Motor Mfg. Kentucky, Inc. v. Williams*, 122 S. Ct. 681, 692, 693 (2002). If it is a major activity, the Court has noted that a claimant would be required to show an inability to work in a "broad range of jobs" rather than a specific job. *See Sutton v. United Airlines, Inc.*, 527 U.S. 470, 492 (1999).

<sup>9</sup> *See, e.g., United States v. Southern Management Corp.*, 955 F.2d 914, 919 (4<sup>th</sup> Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance").

how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him from housing on that basis.

**Example 1:** A housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant's current place of residence. On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism. Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant. The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant's recent past conduct. The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit. However, the manager could have checked this applicant's references to the same extent and in the same manner as he would have checked any other applicant's references. If such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, the manager could then have rejected the applicant based on direct threat.

**Example 2:** James X, a tenant at the Shady Oaks apartment complex, is arrested for threatening his neighbor while brandishing a baseball bat. The Shady Oaks' lease agreement contains a term prohibiting tenants from threatening violence against other residents. Shady Oaks' rental manager investigates the incident and learns that James X threatened the other resident with physical violence and had to be physically restrained by other neighbors to keep him from acting on his threat. Following Shady Oaks' standard practice of strictly enforcing its "no threats" policy, the Shady Oaks rental manager issues James X a 30-day notice to quit, which is the first step in the eviction process. James X's attorney contacts Shady Oaks' rental manager and explains that James X has a psychiatric disability that causes him to be physically violent when he stops taking his prescribed medication. Suggesting that his client will not pose a direct threat to others if proper safeguards are taken, the attorney requests that the rental manager grant James X an exception to the "no threats" policy as a reasonable accommodation based on James X's disability. The Shady Oaks rental manager need only grant the reasonable accommodation if James X's attorney can provide satisfactory assurance that James X will receive appropriate counseling and

periodic medication monitoring so that he will no longer pose a direct threat during his tenancy. After consulting with James X, the attorney responds that James X is unwilling to receive counseling or submit to any type of periodic monitoring to ensure that he takes his prescribed medication. The rental manager may go forward with the eviction proceeding, since James X continues to pose a direct threat to the health or safety of other residents.

## **6. What is a "reasonable accommodation" for purposes of the Act?**

A “reasonable accommodation” is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual’s disability.

**Example 1:** A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

**Example 2:** A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.

**Example 3:** A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing

provider must make an exception to its “no pets” policy to accommodate this tenant.

**7. Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?**

Yes. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable – *i.e.*, if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. An interactive process in which the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

**Example:** As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection. The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster. Because the housing development is a small operation with limited financial resources and the maintenance staff are on site only twice per week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service. Accordingly, the requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant's disability-related needs – for instance, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash and the provider's maintenance staff can then transfer the trash to the dumpster when they are on site. Such an accommodation would not involve a

fundamental alteration of the provider's operations and would involve little financial and administrative burden for the provider while accommodating the tenant's disability-related needs.

There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

### **8. What is a “fundamental alteration”?**

A "fundamental alteration" is a modification that alters the essential nature of a provider's operations.

**Example:** A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

### **9. What happens if providing a requested accommodation involves some costs on the part of the housing provider?**

Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations. The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative

burden.

**10. What happens if no agreement can be reached through the interactive process?**

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law. For more information about the complaint process, see question 19 below.

**11. May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?**

No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

**Example 1:** A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes. He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises. It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes. Since allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter. However, since the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, the man must operate his motorized scooter in a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property. If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

**Example 2:** Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for

the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

## **12. When and how should an individual request an accommodation?**

Under the Act, a resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability.

An applicant or resident is not entitled to receive a reasonable accommodation unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable accommodation request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

Although a reasonable accommodation request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

**Example:** A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend. The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form. The provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

## **13. Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?**



No. The Act does not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid individuals with disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request, and, in the event of later disputes, provide records to show that the requests received proper consideration.

A provider may not refuse a request, however, because the individual making the request did not follow any formal procedures that the provider has adopted. If a provider adopts formal procedures for processing reasonable accommodation requests, the provider should ensure that the procedures, including any forms used, do not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. See Questions 16 - 18, which discuss the disability-related information that a provider may and may not request for the purposes of evaluating a reasonable accommodation request.

**14. Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?**

No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made. A provider has notice that a reasonable accommodation request has been made if a person, her family member, or someone acting on her behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability, even if the words “reasonable accommodation” are not used as part of the request.

**15. What if a housing provider fails to act promptly on a reasonable accommodation request?**

A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

**16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?**

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of such persons' disabilities. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.

**Example 1:** A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. However, the provider may not ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information/documentation of the disability-related need for an accessible unit.

**Example 2:** A housing provider operates housing that is legally limited to persons with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent that an applicant has a chronic mental disability, the provider may request reliable information/documentation of the mental disability needed to qualify for the housing.

In some instances, a provider may also request certain information about an applicant's or a resident's disability if the applicant or resident requests a reasonable accommodation. See Questions 17 and 18 below.

**17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?**

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information

about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

**Example 1:** An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.

**Example 2:** A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.

**Example 3:** An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

**18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?**

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (*see* Answer 16, above). However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits<sup>10</sup> or a credible statement by the individual). A doctor or other

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<sup>10</sup> Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. *See e.g., Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 797 (1999)

medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (*e.g.*, a court-issued subpoena requiring disclosure).

**19. If a person believes she has been unlawfully denied a reasonable accommodation, what should that person do if she wishes to challenge that denial under the Act?**

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: <http://www.hud.gov>; or
- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity  
Department of Housing & Urban Development  
451 Seventh Street, S.W., Room 5204  
Washington, DC 20410-2000

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(noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice  
Civil Rights Division  
Housing and Civil Enforcement Section – G St.  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at <http://www.usdoj.gov/crt/housing/hcehome.html>.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

# Appendix F

## HUD-DOJ Joint Statement on Reasonable Modification



**U.S. DEPARTMENT OF JUSTICE  
CIVIL RIGHTS DIVISION**



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY**

*Washington, D.C.  
March 5, 2008*

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**JOINT STATEMENT OF  
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
AND THE DEPARTMENT OF JUSTICE**

***REASONABLE MODIFICATIONS UNDER THE  
FAIR HOUSING ACT***

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**Introduction**

The Department of Justice (“DOJ”) and the Department of Housing and Urban Development (“HUD”) are jointly responsible for enforcing the federal Fair Housing Act<sup>1</sup> (the “Act”), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.<sup>2</sup> One type of disability discrimination prohibited by the Act is a refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises.<sup>3</sup> HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable modifications to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to reasonable modifications.<sup>4</sup>

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<sup>1</sup> The Fair Housing Act is codified at 42 U.S.C. §§ 3601-3619.

<sup>2</sup> The Act uses the term “handicap” instead of “disability.” Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that the definition of “disability” in the Americans with Disabilities Act is drawn almost verbatim “from the definition of ‘handicap’ contained in the Fair Housing Amendments Act of 1988”). This document uses the term “disability,” which is more generally accepted.

<sup>3</sup> 42 U.S.C. § 3604(f)(3)(A).

<sup>4</sup> This Statement does not address the principles relating to reasonable accommodations. For further information see the Joint Statement of the Department of Housing and Urban

This Statement is not intended to provide specific guidance regarding the Act's design and construction requirements for multifamily dwellings built for first occupancy after March 13, 1991. Some of the reasonable modifications discussed in this Statement are features of accessible design that are required for covered multifamily dwellings pursuant to the Act's design and construction requirements. As a result, people involved in the design and construction of multifamily dwellings are advised to consult the Act at 42 U.S.C. § 3604(f)(3)(c), the implementing regulations at 24 C.F.R. § 100.205, the Fair Housing Accessibility Guidelines, and the Fair Housing Act Design Manual. All of these are available on HUD's website at [www.hud.gov/offices/fheo/disabilities/index.cfm](http://www.hud.gov/offices/fheo/disabilities/index.cfm). Additional technical guidance on the design and construction requirements can also be found on HUD's website and the Fair Housing Accessibility FIRST website at: <http://www.fairhousingfirst.org>.

## **Questions and Answers**

### **1. What types of discrimination against persons with disabilities does the Act prohibit?**

The Act prohibits housing providers from discriminating against housing applicants or residents because of their disability or the disability of anyone associated with them and from treating persons with disabilities less favorably than others because of their disability. The Act makes it unlawful for any person to refuse "to permit, at the expense of the [disabled] person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted."<sup>5</sup> The Act also makes it unlawful for any person to refuse "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling." The Act also prohibits housing providers from refusing residency to persons with disabilities, or, with some narrow exceptions<sup>6</sup>,

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Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act, dated May 17, 2004. This Joint Statement is available at [www.hud.gov/offices/fheo/disabilities/index.cfm](http://www.hud.gov/offices/fheo/disabilities/index.cfm) and [http://www.usdoj.gov/crt/housing/jointstatement\\_ra.htm](http://www.usdoj.gov/crt/housing/jointstatement_ra.htm). See also 42 U.S.C. § 3604(f)(3)(B).

This Statement also does not discuss in depth the obligations of housing providers who are recipients of federal financial assistance to make and pay for structural changes to units and common and public areas that are needed as a reasonable accommodation for a person's disability. See Question 31.

<sup>5</sup> 42 U.S.C. § 3604(f)(3)(A). HUD regulations pertaining to reasonable modifications may be found at 24 C.F.R. § 100.203.

<sup>6</sup> The Act contemplates certain limits to the receipt of reasonable accommodations or reasonable modifications. For example, a tenant may be required to deposit money into an interest bearing



placing conditions on their residency, because those persons may require reasonable modifications or reasonable accommodations.

## **2. What is a reasonable modification under the Fair Housing Act?**

A reasonable modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas. A request for a reasonable modification may be made at any time during the tenancy. The Act makes it unlawful for a housing provider or homeowners' association to refuse to allow a reasonable modification to the premises when such a modification may be necessary to afford persons with disabilities full enjoyment of the premises.

To show that a requested modification may be necessary, there must be an identifiable relationship, or nexus, between the requested modification and the individual's disability. Further, the modification must be "reasonable." Examples of modifications that typically are reasonable include widening doorways to make rooms more accessible for persons in wheelchairs; installing grab bars in bathrooms; lowering kitchen cabinets to a height suitable for persons in wheelchairs; adding a ramp to make a primary entrance accessible for persons in wheelchairs; or altering a walkway to provide access to a public or common use area. These examples of reasonable modifications are not exhaustive.

## **3. Who is responsible for the expense of making a reasonable modification?**

The Fair Housing Act provides that while the housing provider must permit the modification, the tenant is responsible for paying the cost of the modification.

## **4. Who qualifies as a person with a disability under the Act?**

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other

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account to ensure that funds are available to restore the interior of a dwelling to its previous state. See, e.g., Question 21 below. A reasonable accommodation can be conditioned on meeting reasonable safety requirements, such as requiring persons who use motorized wheelchairs to operate them in a manner that does not pose a risk to the safety of others or cause damage to other persons' property. See Joint Statement on Reasonable Accommodations, Question 11.

than addiction caused by current, illegal use of a controlled substance) and alcoholism.

The term “substantially limits” suggests that the limitation is “significant” or “to a large degree.”

The term “major life activity” means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, and speaking. This list of major life activities is not exhaustive.

## **5. Who is entitled to a reasonable modification under the Fair Housing Act?**

Persons who meet the Fair Housing Act’s definition of “person with a disability” may be entitled to a reasonable modification under the Act. However, there must be an identifiable relationship, or nexus, between the requested modification and the individual’s disability. If no such nexus exists, then the housing provider may refuse to allow the requested modification.

**Example 1:** A tenant, whose arthritis impairs the use of her hands and causes her substantial difficulty in using the doorknobs in her apartment, wishes to replace the doorknobs with levers. Since there is a relationship between the tenant’s disability and the requested modification and the modification is reasonable, the housing provider must allow her to make the modification at the tenant’s expense.

**Example 2:** A homeowner with a mobility disability asks the condo association to permit him to change his roofing from shaker shingles to clay tiles and fiberglass shingles because he alleges that the shingles are less fireproof and put him at greater risk during a fire. There is no evidence that the shingles permitted by the homeowner’s association provide inadequate fire protection and the person with the disability has not identified a nexus between his disability and the need for clay tiles and fiberglass shingles. The homeowner’s association is not required to permit the homeowner’s modification because the homeowner’s request is not reasonable and there is no nexus between the request and the disability.

## **6. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested reasonable modification?**

A housing provider may not ordinarily inquire as to the nature and severity of an individual’s disability. However, in response to a request for a reasonable modification, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act’s definition of disability (i.e., has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed modification, and (3) shows the relationship between the person’s disability and the need for the requested modification. Depending on the individual’s circumstances, information verifying that the person meets the Act’s definition of disability can usually be provided by the individual herself (e.g., proof that an individual under 65 years of age receives Supplemental Security

Income or Social Security Disability Insurance benefits<sup>8</sup> or a credible statement by the individual). A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable modification is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable modification request or unless disclosure is required by law (e.g., a court-issued subpoena requiring disclosure).

**7. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable modification?**

A housing provider is entitled to obtain information that is necessary to evaluate whether a requested reasonable modification may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the housing provider, and if the need for the requested modification is also readily apparent or known, then the provider may not request any additional information about the requester's disability or the disability-related need for the modification.

If the requester's disability is known or readily apparent to the provider, but the need for the modification is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the modification.

**Example 1:** An applicant with an obvious mobility impairment who uses a motorized scooter to move around asks the housing provider to permit her to install a ramp at the entrance of the apartment building. Since the physical disability (i.e., difficulty walking) and the disability-related need for the requested modification are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested modification.

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<sup>8</sup> Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Income ("SSDI") benefits in most cases meet the definition of a disability under the Fair Housing Act, although the converse may not be true. See, e.g., *Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 797 (1999) (noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

**Example 2:** A deaf tenant asks his housing provider to allow him to install extra electrical lines and a cable line so the tenant can use computer equipment that helps him communicate with others. If the tenant's disability is known, the housing provider may not require him to document his disability; however, since the need for the electrical and cable lines may not be apparent, the housing provider may request information that is necessary to support the disability-related need for the requested modification.

## **8. Who must comply with the Fair Housing Act's reasonable modification requirements?**

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to allow an individual to make reasonable modifications when such modifications may be necessary to afford a person with a disability full enjoyment of the premises – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. See, e.g., City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 2d 703, 710 (D. Md. 2001), *aff'd*, 2002 WL 2012545 (4th Cir. 2002).

## **9. What is the difference between a *reasonable accommodation* and a *reasonable modification* under the Fair Housing Act?<sup>9</sup>**

Under the Fair Housing Act, a *reasonable modification* is a structural change made to the premises whereas a *reasonable accommodation* is a change, exception, or adjustment to a rule, policy, practice, or service. A person with a disability may need either a reasonable accommodation or a reasonable modification, or both, in order to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Generally, under the Fair Housing Act, the housing provider is responsible for the costs associated with a reasonable accommodation unless it is an undue financial and administrative burden, while the tenant or someone acting on the tenant's behalf, is responsible for costs associated with a reasonable modification. See Reasonable Accommodation Statement, Questions 7 and 8.

**Example 1:** Because of a mobility disability, a tenant wants to install grab bars in the bathroom. This is a reasonable modification and must be permitted at the tenant's expense.

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<sup>9</sup> Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability, and obligate housing providers to make and pay for structural changes to facilities, if needed as a reasonable accommodation for applicants and tenants with disabilities, unless doing so poses an undue financial and administrative burden. See Question 31.

**Example 2:** Because of a hearing disability, a tenant wishes to install a peephole in her door so she can see who is at the door before she opens it. This is a reasonable modification and must be permitted at the tenant's expense.

**Example 3:** Because of a mobility disability, a tenant wants to install a ramp outside the building in a common area. This is a reasonable modification and must be permitted at the tenant's expense. See also Questions 19, 20 and 21.

**Example 4:** Because of a vision disability, a tenant requests permission to have a guide dog reside with her in her apartment. The housing provider has a "no-pets" policy. This is a request for a reasonable accommodation, and the housing provider must grant the accommodation.

**10. Are reasonable modifications restricted to the interior of a dwelling?**

No. Reasonable modifications are not limited to the interior of a dwelling. Reasonable modifications may also be made to public and common use areas such as widening entrances to fitness centers or laundry rooms, or for changes to exteriors of dwelling units such as installing a ramp at the entrance to a dwelling.

**11. Is a request for a parking space because of a physical disability a *reasonable accommodation* or a *reasonable modification*?**

Courts have treated requests for parking spaces as requests for a reasonable accommodation and have placed the responsibility for providing the parking space on the housing provider, even if provision of an accessible or assigned parking space results in some cost to the provider. For example, courts have required a housing provider to provide an assigned space even though the housing provider had a policy of not assigning parking spaces or had a waiting list for available parking. However, housing providers may not require persons with disabilities to pay extra fees as a condition of receiving accessible parking spaces.

Providing a parking accommodation could include creating signage, repainting markings, redistributing spaces, or creating curb cuts. This list is not exhaustive.

**12. What if the structural changes being requested by the tenant or applicant are in a building that is subject to the design and construction requirements of the Fair Housing Act and the requested structural changes are a feature of accessible design that should have already existed in the unit or common area, e.g., doorways wide enough to accommodate a wheelchair, or an accessible entryway to a unit.**

The Fair Housing Act provides that covered multifamily dwellings built for first occupancy after March 13, 1991, shall be designed and constructed to meet certain minimum accessibility and adaptability standards. If any of the structural changes needed by the tenant are ones that should have been included in the unit or public and common use area when constructed then the housing provider may be responsible for providing and paying for those requested structural changes. However, if the requested structural changes are not a feature of accessible design that should have already existed in the building pursuant to the design and construction requirements under the Act, then the tenant is responsible for paying for the cost of the structural changes as a reasonable modification.

Although the design and construction provisions only apply to certain multifamily dwellings built for first occupancy since 1991, a tenant may request reasonable modifications to housing built prior to that date. In such cases, the housing provider must allow the modifications, and the tenant is responsible for paying for the costs under the Fair Housing Act.

For a discussion of the design and construction requirements of the Act, and their applicability, see HUD's website at: [www.hud.gov/offices/fheo/disabilities/index.cfm](http://www.hud.gov/offices/fheo/disabilities/index.cfm) and the Fair Housing Accessibility FIRST website at: <http://www.fairhousingfirst.org>.

**Example 1:** A tenant with a disability who uses a wheelchair resides in a ground floor apartment in a non-elevator building that was built in 1995. Buildings built for first occupancy after March 13, 1991 are covered by the design and construction requirements of the Fair Housing Act. Because the building is a non-elevator building, all ground floor units must meet the minimum accessibility requirements of the Act. The doors in the apartment are not wide enough for passage using a wheelchair in violation of the design and construction requirements but can be made so through retrofitting. Under these circumstances, one federal court has held that the tenant may have a potential claim against the housing provider.

**Example 2:** A tenant with a disability resides in an apartment in a building that was built in 1987. The doors in the unit are not wide enough for passage using a wheelchair but can be made so through retrofitting. If the tenant meets the other requirements for obtaining a modification, the tenant may widen the doorways, at her own expense.

**Example 3:** A tenant with a disability resides in an apartment in a building that was built in 1993 in compliance with the design and construction requirements of the Fair Housing Act. The tenant wants to install grab bars in the bathroom because of her disability. Provided that the tenant meets the other requirements for obtaining a modification, the tenant may install the grab bars at her own expense.

### **13. Who is responsible for expenses associated with a reasonable modification, e.g., for upkeep or maintenance?**

The tenant is responsible for upkeep and maintenance of a modification that is used exclusively by her. If a modification is made to a common area that is normally maintained by the housing provider, then the housing provider is responsible for the upkeep and maintenance of the modification. If a modification is made to a common area that is not normally maintained by

the housing provider, then the housing provider has no responsibility under the Fair Housing Act to maintain the modification.

**Example 1:** Because of a mobility disability, a tenant, at her own expense, installs a lift inside her unit to allow her access to a second story. She is required to maintain the lift at her expense because it is not in a common area.

**Example 2:** Because of a mobility disability, a tenant installs a ramp in the lobby of a multifamily building at her own expense. The ramp is used by other tenants and the public as well as the tenant with the disability. The housing provider is responsible for maintaining the ramp.

**Example 3:** A tenant leases a detached, single-family home. Because of a mobility disability, the tenant installs a ramp at the outside entrance to the home. The housing provider provides no snow removal services, and the lease agreement specifically states that snow removal is the responsibility of the individual tenant. Under these circumstances, the housing provider has no responsibility under the Fair Housing Act to remove snow on the tenant's ramp. However, if the housing provider normally provides snow removal for the outside of the building and the common areas, the housing provider is responsible for removing the snow from the ramp as well.

**14. In addition to current residents, are prospective tenants and buyers of housing protected by the reasonable modification provisions of the Fair Housing Act?**

Yes. A person may make a request for a reasonable modification at any time. An individual may request a reasonable modification of the dwelling at the time that the potential tenancy or purchase is discussed. Under the Act, a housing provider cannot deny or restrict access to housing because a request for a reasonable modification is made. Such conduct would constitute discrimination. The modification does not have to be made, however, unless it is reasonable. See Questions 2, 16, 21 and 23.

**15. When and how should an individual request permission to make a modification?**

Under the Act, a resident or an applicant for housing makes a reasonable modification request whenever she makes clear to the housing provider that she is requesting permission to make a structural change to the premises because of her disability. She should explain that she has a disability, if not readily apparent or not known to the housing provider, the type of modification she is requesting, and the relationship between the requested modification and her disability.

An applicant or resident is not entitled to receive a reasonable modification unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable modification request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable modification request does

not need to mention the Act or use the words “reasonable modification.” However, the requester must make the request in a manner that a reasonable person would understand to be a request for permission to make a structural change because of a disability.

Although a reasonable modification request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable modification requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

**16. Does a person with a disability have to have the housing provider’s approval before making a reasonable modification to the dwelling?**

Yes. A person with a disability must have the housing provider’s approval before making the modification. However, if the person with a disability meets the requirements under the Act for a reasonable modification and provides the relevant documents and assurances, the housing provider cannot deny the request.

**17. What if the housing provider fails to act promptly on a reasonable modification request?**

A provider has an obligation to provide prompt responses to a reasonable modification request. An undue delay in responding to a reasonable modification request may be deemed a failure to permit a reasonable modification.

**18. What if the housing provider proposes that the tenant move to a different unit in lieu of making a proposed modification?**

The housing provider cannot insist that a tenant move to a different unit in lieu of allowing the tenant to make a modification that complies with the requirements for reasonable modifications. See Questions 2, 21 and 23. Housing providers should be aware that persons with disabilities typically have the most accurate knowledge regarding the functional limitations posed by their disability.

**Example:** As a result of a mobility disability, a tenant requests that he be permitted, at his expense, to install a ramp so that he can access his apartment using his motorized wheelchair. The existing entrance to his dwelling is not wheelchair accessible because the route to the front door requires going up a step. The housing provider proposes that in lieu of installing the ramp, the tenant move to a different unit in the building. The tenant is not obligated to accept the alternative proposed by the housing provider, as his request to modify his unit is reasonable and must be approved.



**19. What if the housing provider wants an alternative modification or alternative design for the proposed modification that does not cost more but that the housing provider considers more aesthetically pleasing?**

In general, the housing provider cannot insist on an alternative modification or an alternative design if the tenant complies with the requirements for reasonable modifications. See Questions 2, 21 and 23. If the modification is to the interior of the unit and must be restored to its original condition when the tenant moves out, then the housing provider cannot require that its design be used instead of the tenant's design. However, if the modification is to a common area or an aspect of the interior of the unit that would not have to be restored because it would not be reasonable to do so, and if the housing provider's proposed design imposes no additional costs and still meets the tenant's needs, then the modification should be done in accordance with the housing provider's design. See Question 24 for a discussion of the restoration requirements.

**Example 1:** As a result of a mobility disability, a tenant requests that he be permitted, at his expense, to install a ramp so that he can access his apartment using his motorized wheelchair. The existing entrance to his dwelling is not wheelchair accessible because the route to the front door requires going up a step. The housing provider proposes an alternative design for a ramp but the alternative design costs more and does not meet the tenant's needs. The tenant is not obligated to accept the alternative modification, as his request to modify his unit is reasonable and must be approved.

**Example 2:** As a result of a mobility disability, a tenant requests permission to widen a doorway to allow passage with her wheelchair. All of the doorways in the unit are trimmed with a decorative trim molding that does not cost any more than the standard trim molding. Because in usual circumstances it would not be reasonable to require that the doorway be restored at the end of the tenancy, the tenant should use the decorative trim when he widens the doorway.

**20. What if the housing provider wants a more costly design for the requested modification?**

If the housing provider wishes a modification to be made with more costly materials, in order to satisfy the landlord's aesthetic standards, the tenant must agree only if the housing provider pays those additional costs. Further, as discussed in Questions 21 and 23 below, housing providers may require that the tenant obtain all necessary building permits and may require that the work be performed in a workmanlike manner. If the housing provider requires more costly materials be used to satisfy her workmanship preferences beyond the requirements of the applicable local codes, the tenant must agree only if the housing provider pays for those additional costs as well. In such a case, however, the housing provider's design must still meet the tenant's needs.

**21. What types of documents and assurances may a housing provider require regarding the modification before granting the reasonable modification?**

A housing provider may require that a request for a reasonable modification include a description of the proposed modification both before changes are made to the dwelling and before granting the modification. A description of the modification to be made may be provided to a housing provider either orally or in writing depending on the extent and nature of the proposed modification. A housing provider may also require that the tenant obtain any building permits needed to make the modifications, and that the work be performed in a workmanlike manner.

The regulations implementing the Fair Housing Act state that housing providers generally cannot impose conditions on a proposed reasonable modification. For example, a housing provider cannot require that the tenant obtain additional insurance or increase the security deposit as a condition that must be met before the modification will be allowed. However, the Preamble to the Final Regulations also indicates that there are some conditions that can be placed on a tenant requesting a reasonable modification. For example, in certain limited and narrow circumstances, a housing provider may require that the tenant deposit money into an interest bearing account to ensure that funds are available to restore the interior of a dwelling to its previous state, ordinary wear and tear excepted. Imposing conditions not contemplated by the Fair Housing Act and its implementing regulations may be the same as an illegal refusal to permit the modification.

**22. May a housing provider or homeowner's association condition approval of the requested modification on the requester obtaining special liability insurance?**

No. Imposition of such a requirement would constitute a violation of the Fair Housing Act.

**Example:** Because of a mobility disability, a tenant wants to install a ramp outside his unit. The housing provider informs the tenant that the ramp may be installed, but only after the tenant obtains separate liability insurance for the ramp out of concern for the housing provider's potential liability. The housing provider may not impose a requirement of liability insurance as a condition of approval of the ramp.

**23. Once the housing provider has agreed to a reasonable modification, may she insist that a particular contractor be used to perform the work?**

No. The housing provider cannot insist that a particular contractor do the work. The housing provider may only require that whoever does the work is reasonably able to complete the work in a workmanlike manner and obtain all necessary building permits.

**24. If a person with a disability has made reasonable modifications to the interior of the dwelling, must she restore *all* of them when she moves out?**

The tenant is obligated to restore those portions of the interior of the dwelling to their previous condition only where "it is reasonable to do so" and where the housing provider has requested the restoration. The tenant is not responsible for expenses associated with reasonable

wear and tear. In general, if the modifications do not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant cannot be required to restore the modifications to their prior state. A housing provider may choose to keep the modifications in place at the end of the tenancy. See also Question 28.

**Example 1:** Because the tenant uses a wheelchair, she obtained permission from her housing provider to remove the base cabinets and lower the kitchen sink to provide for greater accessibility. It is reasonable for the housing provider to ask the tenant to replace the cabinets and raise the sink back to its original height.

**Example 2:** Because of a mobility disability, a tenant obtained approval from the housing provider to install grab bars in the bathroom. As part of the installation, the contractor had to construct reinforcements on the underside of the wall. These reinforcements are not visible and do not detract from the use of the apartment. It is reasonable for the housing provider to require the tenant to remove the grab bars, but it is not reasonable for the housing provider to require the tenant to remove the reinforcements.

**Example 3:** Because of a mobility disability, a tenant obtained approval from the housing provider to widen doorways to allow him to maneuver in his wheelchair. In usual circumstances, it is not reasonable for the housing provider to require him to restore the doorways to their prior width.

**25. Of the reasonable modifications made to the interior of a dwelling that must be restored, must the person with a disability pay to make those restorations when she moves out?**

Yes. Reasonable restorations of the dwelling required as a result of modifications made to the interior of the dwelling must be paid for by the tenant unless the next occupant of the dwelling wants to retain the reasonable modifications and where it is reasonable to do so, the next occupant is willing to establish a new interest bearing escrow account. The subsequent tenant would have to restore the modifications to the prior condition at the end of his tenancy if it is reasonable to do so and if requested by the housing provider. See also Question 24.

**26. If a person with a disability has made a reasonable modification to the exterior of the dwelling, or a common area, must she restore it to its original condition when she moves out?**

No. The Fair Housing Act expressly provides that housing providers may only require restoration of modifications made to interiors of the dwelling at the end of the tenancy. Reasonable modifications such as ramps to the front door of the dwelling or modifications made to laundry rooms or building entrances are not required to be restored.

**27. May a housing provider increase or require a person with a disability to pay a security deposit if she requests a reasonable modification?**

No. The housing provider may not require an increased security deposit as the result of a request for a reasonable modification, nor may a housing provider require a tenant to pay a security deposit when one is not customarily required. However, a housing provider may be able to take other steps to ensure that money will be available to pay for restoration of the interior of the premises at the end of the tenancy. See Questions 21 and 28.

**28. May a housing provider take other steps to ensure that money will be available to pay for restoration of the interior of the premises at the end of the tenancy?**

Where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the housing provider may negotiate with the tenant as part of a restoration agreement a provision that requires the tenant to make payments into an interest-bearing escrow account. A housing provider may not routinely require that tenants place money in escrow accounts when a modification is sought. Both the amount and the terms of the escrow payment are subject to negotiation between the housing provider and the tenant.

Simply because an individual has a disability does not mean that she is less creditworthy than an individual without a disability. The decision to require that money be placed in an escrow account should be based on the following factors: 1) the extent and nature of the proposed modifications; 2) the expected duration of the lease; 3) the credit and tenancy history of the individual tenant; and 4) other information that may bear on the risk to the housing provider that the premises will not be restored.

If the housing provider decides to require payment into an escrow account, the amount of money to be placed in the account cannot exceed the cost of restoring the modifications, and the period of time during which the tenant makes payment into the escrow account must be reasonable. Although a housing provider may require that funds be placed in escrow, it does not automatically mean that the full amount of money needed to make the future restorations can be required to be paid at the time that the modifications are sought. In addition, it is important to note that interest from the account accrues to the benefit of the tenant. If an escrow account is established, and the housing provider later decides not to have the unit restored, then all funds in the account, including the interest, must be promptly returned to the tenant.

**Example 1:** Because of a mobility disability, a tenant requests a reasonable modification. The modification includes installation of grab bars in the bathroom. The tenant has an excellent credit history and has lived in the apartment for five years before becoming disabled. Under these circumstances, it may not be reasonable to require payment into an escrow account.

**Example 2:** Because of a mobility disability, a new tenant with a poor credit history wants to lower the kitchen cabinets to a more accessible height. It may be reasonable for the housing provider to require payment into an interest bearing escrow account to ensure that funds are available for restoration.

**Example 3:** A housing provider requires all tenants with disabilities to pay a set sum into an interest bearing escrow account before approving any request for a reasonable modification. The amount required by the housing provider has no relationship to the actual cost of the restoration. This type of requirement violates the Fair Housing Act.

**29. What if a person with a disability moves into a rental unit and wants the carpet taken up because her wheelchair does not move easily across carpeting? Is that a reasonable accommodation or modification?**

Depending on the circumstances, removal of carpeting may be either a reasonable accommodation or a reasonable modification.

**Example 1:** If the housing provider has a practice of not permitting a tenant to change flooring in a unit and there is a smooth, finished floor underneath the carpeting, generally, allowing the tenant to remove the carpet would be a reasonable accommodation.

**Example 2:** If there is no finished flooring underneath the carpeting, generally, removing the carpeting and installing a finished floor would be a reasonable modification that would have to be done at the tenant's expense. If the finished floor installed by the tenant does not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant would not have to restore the carpeting at the conclusion of the tenancy. See Questions 24 and 25.

**Example 3:** If the housing provider has a practice of replacing the carpeting before a new tenant moves in, and there is an existing smooth, finished floor underneath, then it would be a reasonable accommodation of his normal practice of installing new carpeting for the housing provider to just take up the old carpeting and wait until the tenant with a mobility disability moves out to put new carpeting down.

**30. Who is responsible for paying for the costs of structural changes to a dwelling unit that has not yet been constructed if a purchaser with a disability needs different or additional features to make the unit meet her disability-related needs?**

If the dwelling unit is not subject to the design and construction requirements (i.e., a detached single family home or a multi-story townhouse without an elevator), then the purchaser is responsible for the additional costs associated with the structural changes. The purchaser is responsible for any additional cost that the structural changes might create over and above what the original design would have cost.

If the unit being purchased is subject to the design and construction requirements of the Fair Housing Act, then all costs associated with incorporating the features required by the Act are borne by the builder. If a purchaser with a disability needs different or additional features added to a unit under construction or about to be constructed beyond those already required by the Act, and it would cost the builder more to provide the requested features, the structural changes would be considered a reasonable modification and the additional costs would have to

be borne by the purchaser. The purchaser is responsible for any additional cost that the structural changes might create over and above what the original design would have cost.

**Example 1:** A buyer with a mobility disability is purchasing a single family dwelling under construction and asks for a bathroom sink with a floorless base cabinet with retractable doors that allows the buyer to position his wheelchair under the sink. If the cabinet costs more than the standard vanity cabinet provided by the builder, the buyer is responsible for the additional cost, not the full cost of the requested cabinet. If, however, the alternative cabinet requested by the buyer costs less than or the same as the one normally provided by the builder, and the installation costs are also the same or less, then the builder should install the requested cabinet without any additional cost to the buyer.

**Example 2:** A buyer with a mobility disability is purchasing a ground floor unit in a detached townhouse that is designed with a concrete step at the front door. The buyer requests that the builder grade the entrance to eliminate the need for the step. If the cost of providing the at-grade entrance is no greater than the cost of building the concrete step, then the builder would have to provide the at-grade entrance without additional charge to the purchaser.

**Example 3:** A buyer with a mobility disability is purchasing a unit that is subject to the design and construction requirements of the Fair Housing Act. The buyer wishes to have grab bars installed in the unit as a reasonable modification to the bathroom. The builder is responsible for installing and paying for the wall reinforcements for the grab bars because these reinforcements are required under the design and construction provisions of the Act. The buyer is responsible for the costs of installing and paying for the grab bars.

**31. Are the rules the same if a person with a disability lives in housing that receives federal financial assistance and the needed structural changes to the unit or common area are the result of the tenant having a disability?**

Housing that receives federal financial assistance is covered by both the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973. Under regulations implementing Section 504, structural changes needed by an applicant or resident with a disability in housing receiving federal financial assistance are considered reasonable accommodations. They must be paid for by the housing provider unless providing them would be an undue financial and administrative burden or a fundamental alteration of the program or unless the housing provider can accommodate the individual's needs through other means. Housing that receives federal financial assistance and that is provided by state or local entities may also be covered by Title II of the Americans with Disabilities Act.

**Example 1:** A tenant who uses a wheelchair and who lives in privately owned housing needs a roll-in shower in order to bathe independently. Under the Fair Housing Act the tenant would be responsible for the costs of installing the roll-in shower as a reasonable modification to his unit.

**Example 2:** A tenant who uses a wheelchair and who lives in housing that receives federal financial assistance needs a roll-in shower in order to bathe independently. Under Section 504 of the Rehabilitation Act of 1973, the housing provider would be obligated to pay for and install the roll-in shower as a reasonable accommodation to the tenant unless doing so was an undue financial and administrative burden or unless the housing provider could meet the tenant’s disability-related needs by transferring the tenant to another appropriate unit that contains a roll-in shower.

HUD has provided more detailed information about Section 504’s requirements. See [www.hud.gov/offices/fheo/disabilities/sect504.cfm](http://www.hud.gov/offices/fheo/disabilities/sect504.cfm).

**32. If a person believes that she has been unlawfully denied a reasonable modification, what should that person do if she wants to challenge that denial under the Act?**

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider’s wrongful denial of a request for a reasonable modification, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the “on-line” complaint form available on the HUD internet site: <http://www.hud.gov>; or
- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity  
Department of Housing & Urban Development  
451 Seventh Street, S.W., Room 5204  
Washington, DC 20410-2000

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a “pattern or practice” of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application

and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice  
Civil Rights Division  
Housing and Civil Enforcement Section – G St.  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section’s website at <http://www.usdoj.gov/crt/housing/hcehome.html>.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice’s policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.



# **Appendix G**

## **National Fair Housing Training Academy**

**Learn critical points of the Fair Housing Act.**

**Get expert training on how to conduct a fair housing investigation correctly.**

**Sharpen your analytical, reasoning, and business writing skills.**

**Enroll in Week One of the NFHTA Core Curriculum Training (HUD Course No. HUDL8000D).**

Order of Sessions: You must take the courses in sequential order.

## *Learning for the Civil Rights Expert*

### Fair Housing Law and Ethics

### Critical Thinking and Investigations

### Clear Writing Through Critical Thinking

#### Here is a review of the courses offered in Week One:

**Fair Housing Law and Ethics:** a two-day course designed to provide investigators with a framework for conducting impartial, fair, and ethical investigations.

In Fair Housing Law and Ethics, you will learn to:

- Describe the overall coverage of the Fair Housing Act and the most common situations that give rise to ethical situations.
- Identify the Fair Housing Act's protected classes, the types of conduct and activities prohibited, and Fair Housing exemptions.
- Respond appropriately in situations in which there is a potential appearance of partisanship or improper relationships.



## About the Academy

*Created in 2004, the National Fair Housing Academy (NFHTA) is the first and only institution in the United States that trains advocates, lawyers, investigators and others in the prevention and elimination of housing discrimination.*

*NFHTA aims to lead and inspire, through excellence in training and research, the education and development of the principles of fair housing and equal opportunities for all people residing in the United States.*

**Critical Thinking and Investigations:** a One-day course that introduces participants to a structured approach to investigating fair housing complaints.

This structured approach helps participants to:

- Conduct fair, impartial, and thorough investigations.
- Obtain the facts and circumstances that either prove or disprove an allegation of discrimination.
- Document the facts and circumstances of the case.

In Critical Thinking and Investigations, you will learn to:

- Explain the purpose of the fair housing complaint investigation, and conduct an interview in a fair housing investigation.
- Identify the steps for investigating a fair housing complaint and the key players in the complaint investigations process.
- Apply the fair housing investigation process.

**Clear Writing Through Critical Thinking:** a one-day course that will assist participants in improving their critical reasoning skills and linking those thinking skills together with clear writing concepts to documents such as Determinations and Final Investigative Reports that result from a fair housing investigation.

In Clear Writing Through Critical Thinking, you will learn to:

- Develop, organize and link ideas in paragraph form for emphasis.
- Establish a logical sequence and structure for those ideas.
- Identify weaknesses in writing and write clear and well-organized procedures.
- Draw conclusions using analysis and identification of unwarranted assumptions, fallacies, or thinking flaws.
- Apply analytical, reasoning, organizational, and logical skills to business writing.

## For the Fair Housing Professional

NFHTA welcomes Fair Housing Assistance Program Directors (FHAP), FHAP Deputy Directors, Attorneys, Board Members and other fair housing professionals!

Week One training is designed for you. Strengthen your civil rights knowledge and skills today. To learn more about NFHTA Core Curriculum Training, call **202-314-3514** or visit our website at: [www.nfhta.org](http://www.nfhta.org).

**Learn critical points of the Fair Housing Act.**

**Get expert training on how to conduct a fair housing investigation correctly.**

**Sharpen your analytical, reasoning, and business writing skills.**

**Enroll in Week Two of the NFHTA Core Curriculum Training (HUD Course No. HUDL80001D).**

Order of Sessions: You must take the courses in sequential order.

Week One must be completed prior to registering for Week Two.

## *Educating Civil Rights Experts*

### **Reasonable Accommodations and Modifications The Psychological Impact of Racial Discrimination Discovery Techniques and Evidence**

**Here is a review of the courses offered in Week Two:**

**Reasonable Accommodations and Modifications:** This one-day course provides participants with a complete historical and legal framework for the development of reasonable accommodations and modifications as an integral part of disability civil rights laws and regulations, and the extent of the impact and utilization in Fair Housing investigations.

In Reasonable Accommodations and Modifications, you will learn to:

- Effectively understand and determine when and how to use reasonable accommodation and modification concepts in the intake, investigation, and analysis of discrimination complaints based on disability.
- Describe and identify four major federal laws prohibiting discrimination against persons with disabilities.
- Present the legal argument for when, and to what extent, the tenant must pay for a reasonable modification.



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- Present the “most restrictive standard” application and the “safe harbor” requirements of federal and state civil rights laws and building codes.
- Identify the seven accessibility design requirements for newly constructed multifamily housing under the Fair Housing Act.

**The Psychological Impact of Racial Discrimination:** a one-day exploration of the psychological turmoil and hurt caused by illegal discrimination.

In this course, you will learn to:

- Discuss ways in which psychological harm is investigated and documented in the course of an investigation.
- Identify some of the personal and psychological challenges that are experienced by victims of racial discrimination.

**Discovery Techniques and Evidence:** a three-day course that focuses on the assessment of evidence in a fair housing investigation. Federal rules for evidence, including relevance, rules of hearsay and elements of proof will be discussed. The course focuses on the collection of investigative evidence that tends to prove or disprove discrimination and it also covers planning and executing an onsite investigation.

In this course, you will learn to:

- Describe the concepts of relevance and admissibility as they relate to evidence.
- Identify witness testimony that is competent and admissible.
- Develop an investigative plan that includes the most efficient and productive methods for gathering information through proper sequencing of discovery.
- Develop an investigative plan that includes the most efficient and productive methods for gathering information through proper sequencing of discovery.
- Draft a request for evidence and a subpoena.

## For the Fair Housing Professional

NFHTA welcomes Fair Housing Assistance Program Directors (FHAP), FHAP Deputy Directors, Attorneys, Board Members and other fair housing professionals!

Week Two training is designed for you. Strengthen your civil rights knowledge and skills today. To learn more about NFHTA Core Curriculum Training, call **202-314-3514** or visit our website at: [www.nfhta.org](http://www.nfhta.org).

**Apply theories of proof to determine if housing discrimination occurred.**

**Understand the principles of the conciliation process.**

**Enroll in Week Three of the NFHTA Core Curriculum Training** (HUD Course No. HUDL80002D).

Order of Sessions: You must take the courses in sequential order.

Week One and Two must be completed prior to registering for Week Three.

## *Education for the Civil Rights Expert*

### Theories of Proof and Data Analysis Negotiation Skills and Interviewing Techniques

**Here is a review of the courses offered in Week Three:**

**Theories of Proof and Data Analysis:** a two-day course that provides an overview of various theories of proof and data analysis that have been applied by courts and their application to the investigative process. The course presents an opportunity to apply these principles to investigative situations using in-depth case studies and analysis designed to stimulate and enhance critical thinking.

In this course, you will learn to:

- List the three elements required in a housing discrimination complaint and recognize when those elements are present or not.
- Understand the concept of “motive” for proving that discriminatory practice has occurred.
- Define the terms discriminatory intent and discriminatory impact.
- Understand how the concept burden of proof applies to housing discrimination complaints
- Determine what type of evidence proves or disproves an allegation of discrimination.
- Apply the proof theories to determine whether a compliant has merit.

## **About the Academy**

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*NFHTA aims to lead and inspire, through excellence in training and research, the education and development of the principles of fair housing and equal opportunities for all people residing in the United States.*

**Negotiation Skills and Interviewing Techniques:** a three-day course that covers the principals of the conciliation process, including fundamental principles of negotiation, legal requirements and win-win strategies.

In this course, you will learn to:

- Focus on “reading’ people during negotiations
- Conduct effective interviews during the investigation process.

## **For the Fair Housing Professional**

NFHTA welcomes Fair Housing Assistance Program Directors (FHAP), FHAP Deputy Directors, Attorneys, Board Members and other fair housing professionals!

Week Three training is designed for you. Strengthen your civil rights knowledge and skills today. To learn more about NFHTA Core Curriculum Training, call **202-314-3514** or visit our website at: [www.nfhta.org](http://www.nfhta.org).



**Enhance your ability to examine and analyze testing evidence.**

**Learn how to summarize the essential elements of a fair housing complaint.**

**Apply your skills, techniques and knowledge in a simulated investigative situation.**

**Enroll in Week Four of the NFHTA Core Curriculum Training (HUD Course No. HUDL80003D).**

Order of Sessions: You must take the courses in sequential order.

Week One, Two and Three must be completed prior to registering for Week Four.

*Where learning leads to equality*

## Standards for Testing Cases

## Briefing Techniques for Complaint Investigations

## Fair Housing Investigation Review and Application

**Here is a review of the courses offered in Week Four:**

**Standards for Testing Cases:** This one-day course is designed to enhance the ability of investigators to examine and analyze testing evidence in an investigation. This course gives participants a brief introduction to the testing standards and focuses on the skills needed to determine whether a test has been properly conducted and how to read and analyze testing results.

In this course, you will learn to:

- Describe the law in fair housing as it relates to testing.
- Explain the general role testing plays in an investigation and testing methodology.
- Describe situations when testing may or may not be effective.
- Explain what an investigator should look for in testing data.
- Apply testing methodology in each stage of the investigative process.





### **About the Academy**

*Created in 2004, the National Fair Housing Academy (NHFTA) is the first and only institution in the United States that trains advocates, lawyers, investigators and others in the prevention and elimination of housing discrimination.*

*NHFTA aims to lead and inspire, through excellence in training and research, the education and development of the principles of fair housing and equal opportunities for all people residing in the United States.*

**Briefing Techniques for Complaint Investigations:** a two-day course that trains investigators to summarize the essential elements of a fair housing complaint investigation, ensure a complete investigation, and development finding and conclusions.

In this course, you will learn to:

- Identify the jurisdictional elements of a fair housing complaint.
- Determine if all jurisdictional elements occur in various scenarios.
- Summarize a complainant's allegations and the respondent's defense.
- Concisely state the relevant issues of a case.

**Fair Housing Investigation Review and Application:** a two-day course that uses skills, knowledge and techniques taught in earlier NFHTA sessions on fair housing laws, theories of proof, investigative process and skill, discovery techniques, rules of evidence, negotiating skills, damage calculation and apply these skills in a simulated investigative situation.

In this course, you will learn to:

### **For the Fair Housing Professional**

NFHTA welcomes Fair Housing Assistance Program Directors (FHAP), FHAP Deputy Directors, Attorneys, Board Members and other fair housing professionals!

Week Four training is designed for you. Strengthen your civil rights knowledge and skills today. To learn more about NHFTA Core Curriculum Training, call **202-314-3514** or visit our website at: [www.nfhta.org](http://www.nfhta.org).



**Receive hands-on instruction on using TEAPOTS to document an investigation. Learn how to develop a case for litigation and participate in a fair housing trial. Write a comprehensive essay, take the final exam and earn NFHTA certification.**

**Enroll in Week Five of the NFHTA Core Curriculum Training (HUD Course No. HUDL80004D).**

Order of Sessions: You must take the courses in sequential order.

Week One to Four must be completed prior to registering for Week Five.

## *Civil Rights Knowledge at Work*

### **Writing Cases Using TEAPOTS Litigating Fair Housing Cases Take-Home Essay and Final Exam**

#### **Here is a review of the courses offered in Week Five:**

**Writing Cases Using TEAPOTS:** a one-day course that includes a half-day of hands-on instruction on how to use the Title VIII Automated Paperless Office Tracking System (TEAPOTS) to document an investigation. The course will focus on using TEAPOTS to write a final investigative report.

In this course, you will learn to:

- Explain the purpose of the fair housing complaint investigation.
- Create, revitalize or reconnect with the skills needed to build a solid foundation for the investigation of a fair housing complaint.
- Write investigative records, a summary of allegations, an effective witness' summary and a document summary.
- Identify essential information that should be included in the findings and conclusions of the determination.
- Compare summaries of witness statements and document reviews with actual findings and conclusions.



## About the Academy

Created in 2004, the National Fair Housing Academy (NFHTA) is the first and only institution in the United States that trains advocates, lawyers, investigators and others in the prevention and elimination of housing discrimination.

NFHTA aims to lead and inspire, through excellence in training and research, the education and development of the principles of fair housing and equal opportunities for all people residing in the United States.

**Litigating Fair Housing Cases:** a three-day course that provides an understanding of how to develop a case for litigation, including preserving evidence, chain of custody, preparing for a deposition and preparing for effective testimony. The course also gives you an opportunity to participate in, and observe, the trial of a fair housing case.

In this course, you will learn to:

- Explain the purpose and importance of an accurate intake through investigation and analysis of a fair housing complaint.
- Analyze a specific mortgage lending case.
- Appropriate steps in preserving documents, other evidence and maintaining a chain of custody.
- Identify tips, tools and methods in an investigation that provides the basis for giving effective testimony in a deposition or trial.
- Hold a practical hands-on “mock-trial” that enhances factual knowledge of a case from an investigative and legal perspective.

Complete the final week of the NFHTA Core Curriculum Training with a comprehensive take-home essay and a final exam during a half-day session. **And earn your NFHTA certification!**

## For the Fair Housing Professional

NFHTA welcomes Fair Housing Assistance Program Directors (FHAP), FHAP Deputy Directors, Attorneys, Board Members and other fair housing professionals!

Week Five training is designed for you. Strengthen your civil rights knowledge and skills today. To learn more about NFHTA Core Curriculum Training, call **202-314-3514** or visit our website at: **[www.nfhta.org](http://www.nfhta.org)**.



# **Appendix H**

## **Public Meeting Summary**

## Public Meeting Summary:

As part of this project, a public hearing was held at the Newton Free Library on October 4, 2010. More than 30 disability and elder advocacy/service organizations that serve the Newton area were invited. The public notices were published on the City Web site, public notices were posted within City Hall, and it was listed on the Newton TAB Web events calendar. There were 15 attendees, including private citizens, Newton aldermen, service providers and advocates.

A wide variety of comments were offered. Some of the comments listed below may appear to be contradictory but that is due to the differences of opinions offered by participants. In general, the participants were most concerned with both cost and availability of accessible/affordable housing and other accessibility features such as curb cuts. Another common point was the need for political and community organizing around these issues. A particular focus was on making the general public aware of the accessibility needs of persons with disabilities and elders. There were some issues identified that will require further study. Those are listed separately.

The comments of the public meeting are listed below. They are grouped by topic, not in order of importance or in the order that they were offered. The comments were edited in some cases only for purpose of clarity. The content or intent of the participant was not edited.

### General Housing Priorities

- There is not enough affordable housing.
- There should be a greater onus placed on larger housing providers as opposed to smaller housing providers to provide affordable housing.
- Concerns whether local residency preference is helping or hindering access.
- If there is no shortage of affordable housing, there should be no residency preference.
- If there is a shortage of affordable housing, then Newton residents should have first preference.
- Attendees are unaware if outreach is being done to disability and elder service providers and advocates as part of affirmative fair marketing efforts.
- Some elders can age in place only if they have the private resources.
- If elders do not have private resources, it is difficult to age in place.
- Elders need small ranch-style houses which can be made functional for them.
- What is the acceptable definition of affordable (answers: 80 percent AMI, 120 percent AMI).
- Basic infrastructure needs improvements.

- Present situation is in crisis.

### **Accessibility Priorities**

- There is not enough accessible housing.
- It is expensive to provide accessible housing, but the City should not use its federal or state funds to make up the difference.
- Attendees look to Mass Access or real estate agents to locate accessible housing.
- It is difficult to find existing units that are adaptable for all disabilities.
- Many persons with disabilities experience discrimination based on disability and Section 8.
- Present situation is in crisis.
- Commercial building/districts not as accessible as they should be.
- Non-code accessibility: What can be done to promote usability for all disabilities?
- The attendees were unfamiliar with the City of Newton ADA plan and its long-term planning implications.
- Elderly still need support services.
- People with disabilities still need support services.
- Newton is helping these populations receive housing.
- It is hard to know how many curb cuts exist because they are listed by funding source not as a consolidated count in any City report.
- Both City & CDBG should pay for the construction of curb cuts.
- Auditory traffic signals should be installed at the same time road work or curb cuts are done. Signals should be done at the same time.
- Is Newton a good place to raise a child with a disability? (Most attendees only responded regarding special education.)
- The ADA coordinator should be at least half-time.

### **Advocacy Priorities**

- City of Newton has a moral responsibility to making (manipulating) the market to make it affordable to as many people as possible.
- Board of Aldermen needs to be more proactive on housing issues.
- Strides have been made but citizen participation is difficult.
- More political will is needed.
- More funding is needed.
- The City should review/change local zoning that may be contributing to the problem.
- Cities that have done accessibility well did so because of political buy-in, active residents and models of operations.
- There needs to be discussion on how to promote awareness.
- There needs to be a cultural change: Think in terms of both accessible and affordable housing.
- Creating “new” culture will help drive use of discretionary funds.

- There is not enough awareness of what accessibility means.
- Who promotes accessibility? Should it be Mayor's Committee (now the Disability Commission), Board of Aldermen, advocacy organizations, churches, Land Use Commission?
- City needs to educate funding sources such as United Way about the accessibility needs.
- Involved citizens need to advocate and educate those who have/control funding.
- There needs to be a campaign on making accessibility a priority.

**Areas to be explored further**

- Does institutionalization still exist in Newton?
- Attendees unsure if there are long waiting lists for persons with disabilities.
- It is unknown how many accessible units exist.
- Lack of accessible affordable housing is a national problem that requires a national solution.
- Newton should be advocating for a national solution.
- Determine how many curb cuts with city funds and how many were funded through CDBG.
- A study is needed to assess how many affordable units are needed.

# **Appendix I**

## **Glossary**



## Glossary

**Architectural Barriers Act (ABA):** Federal accessibility mandates contracted on behalf of or by the federal government.

**Access Building Code:** A subset of a building code that regulates accessibility in housing and public accommodations.

**Access Standard:** A recommended or mandated set of scoping & coverage specifications, plus technical specifications that provides guidance on federal accessibility compliance.

**Accessible Unit:** A housing unit that is fully compliant with either/or state and federal accessibility design and construction mandates.

**ADA Officer:** Staff person responsible for the development, monitoring and implementation of the Americans with Disabilities Act Transition Plan.

**ADA Transition Plan:** Mandatory plan for recipients of state or local government funding that identifies levels of accessibility and strategies to remove barriers to accessibility on both the architectural and service delivery levels.

**Americans with Disabilities Act Accessibility Guidelines (ADAAG):** Scoping & coverage plus technical specification guidance for ADA compliance.

**Americans with Disabilities Act:** Federal civil rights law that ensures access for person with disabilities: Title I covers employment, Title II covers recipients of state or local government financial assistance, and Title III covers public accommodation.

**American Sign Language (ASL) Interpreter:** An interpreter who facilitates communications for persons who are deaf.

**Community Development Block Grant (CDBG):** A HUD program that funds a variety of community development projects such as housing, accessibility improvements, etc.

**Community Monitor:** Volunteers trained by Massachusetts Office on Disability to review accessibility in their communities.

**Department of Justice (DOJ):** Federal agency that, among other responsibilities, provides technical assistance, investigates complaints and enforces federal accessibility laws.

**Fair Housing Act:** Federal civil rights law covering equal access to housing opportunity.

**HOME:** HUD program that provides formula grants to state and local governments to fund a wide range of activities that build, buy, and/or rehabilitate affordable housing for low-income families.

**Department of Housing & Urban Development (HUD):** Federal agency responsible for housing, fair housing and other community development activities.

**Independent Living Center:** Advocacy organization for persons with disabilities.

**MA Chapter 151B:** State civil rights law which covers equal access to housing opportunity.

**MA Architectural Access Board (MAAB):** Promulgates and enforces state access code.

**MA Office on Disability (MOD):** State agency that monitors and promotes accessibility 521 CMR.

**National Fair Housing Training Academy (NFHTA):** HUD project to provide training for fair housing investigators.

**Project Civic Access:** A Department of Justice (DOJ) program in which evaluation and technical assistance is provided concerning ADA compliance to municipalities.

**Public Accommodation:** A facility or service that is open to the general public such as a public park, leasing office or city library.

**Reasonable Accommodation:** A change or waiver to policy, practices, procedures or services for a person with a disability.

**Reasonable Accommodation Policies:** A written plan on how an organization will provide reasonable accommodations.

**Reasonable Modification:** A physical alteration to provide greater accessibility for persons with disabilities.

**Roll-in Shower:** A flat bottom, level, curbless shower unit that allows a wheelchair-user to independently use the bathing fixture.

**Safe Harbor:** An access standard, regulation or model code approved by HUD to be used for compliance with the Fair Housing Act design and construction requirements.

**Scoping & Coverage:** Determination of which buildings must be accessible and to what degree of accessibility.

**Screen Reader:** Adaptive technology for persons who are blind or have low vision that enables them to access electronic media.

**Sec. 504 Officer:** Staff person responsible for the development, monitoring and implementation of the Sec. 504 plan.

**Sec. 504 Transition Plan:** Mandatory plan for recipients of direct federal funding that identifies levels of accessibility and strategies to remove barriers to accessibility on both the architectural and service delivery levels.

**Sec. 504 of the Rehabilitation Act of 1973:** Federal law that mandates accessibility provisions for persons with disabilities by all entities receiving direct federal funding.

**Substantial Equivalency:** Principle by which laws are compatible to each other in accomplishing a specific outcome, such as accessibility.

**Technical Specifications:** Precise directions on how specific features should be designed and how they should function.

**Uniform Federal Accessibility Standard (UFAS):** The accessibility standard that HUD presently uses for housing that receives direct federal subsidy.

**Universal Design:** Concept for products and environments to be useable by all persons, minimizing the need for adaptation or specialized design.

**Visitability:** Concept to incorporate basic and minimal accessibility features into housing construction to create a more integrated community for persons with disabilities.