



City of Newton Fair Housing Action Plan

Opening the Doors: Newton, a Welcoming Community

**Prepared by the
Newton Fair Housing Task Force
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Section I: Introduction

A. Statement of Purpose

The texture of a community is made up of all the people who live, work and attend school here. Richness in a community is the result of people of different backgrounds sharing their lives together, and that experience is only possible if everyone is equally welcome: people with disabilities, families, people of different races, ethnicities and religions, and socio-economic circumstances.

Newton is part of a greater metropolitan area that does not always reflect these values. Like other parts of the United States, the region is characterized by communities that lack racial and ethnic diversity. These demographics are not accidental, nor are they the result of individual choice. Rather, they were constructed over many years through a combination of factors, including denial of federally insured home mortgages to people of color seeking to buy homes in suburban cities and towns, the routing of highways through communities of color and the consequent displacement of African American and other minority households, land use policies and opposition to affordable housing based on a desire to maintain the homogenous nature of local municipalities, and the persistence of discrimination in the housing market.

Newton shares in this history, but also has a rich background of combating discrimination and promoting the community as a welcoming place. Construction of the Massachusetts Turnpike caused the relocation away from the City of dozens of African American families living in West Newton near the Myrtle Baptist Church. Documented instances of housing discrimination reach back to the 1950s and persist. To address these issues, the community in the past formed such groups as the Citizens Committee for Fair Housing Practice and the Newton Committee for Fair Housing and Equal Rights to assist displaced households and combat housing discrimination. The City's 1968 Low-and-Moderate Income Housing Study noted that opposition to affordable housing was motivated at least in part by racial bias. In response, the Board of Aldermen adopted a resolution declaring the City government's commitment to achieving racial integration.

At each and every point in time, when faced with conditions of discrimination, Newton mobilized to confirm and reinvigorate a commitment to diversity. Already aggressive in challenging housing discrimination,

Newton continues to seek to build a community that embraces the values inherent in the words *fair housing* through this plan for action.

This Fair Housing Action Plan (*Action Plan*) aims towards a vision of a diverse, welcoming community with housing choices and opportunities. The vision is expressed through a number of *Action Steps* that rely on the City, its residents, its public and quasi-public housing agencies, private developers and nonprofit housing, real estate and lending organizations to support and carry them out.

B. Background: The Analysis of Impediments to Fair Housing Choice

The *Action Plan* is an outgrowth of the City's *Analysis of Impediments to Fair Housing Choice (AI)*. The AI was developed as part of the City's *FY06-10 Consolidated Plan*. Recipients of federal housing funds, such as Newton, are required by the U.S. Department of Housing and Urban Development (HUD) to identify obstacles that prevent or challenge a community's ability or commitment to provide housing and services to individuals and families protected by fair housing laws. The *AI* analyzes and records the barriers present in the public and private sectors that make it difficult for a community to widen its welcome to include all people, including people who are marginalized because of their race, ethnicity, family status, disability, economic standing, etc.

The *AI* was developed through a series of discussions with focus groups and targeted individuals and volunteer boards. During the discussion process, participants identified four principal impediments to fair housing choice in Newton including:

- Zoning and land use policies that limit opportunities for affordable housing development
- The cost of developing housing in Newton and the scarcity of land for new development
- The lack of education and outreach on issues related to fair housing
- The lack of empirical data on the extent of housing discrimination in Newton

The principal impediments became the cornerstones of the *AI* and provide the basis for the creation of multiple recommendations for challenging the obstacles to fair housing choice in Newton.

C. The Planning Process

In 2005 a subcommittee of the Newton Housing Partnership, a volunteer body appointed by the Mayor and comprised of professionals and advocates in housing-related fields, concluded that the City needed to apply a broader lens to the challenges to fair housing choice in Newton. Understanding that impediments to fair housing is more than a lack of housing choices including affordable housing, the Housing Partnership initiated the creation of the Newton Fair Housing Task Force (Task Force). The Task Force is comprised of members of the Newton Housing Partnership, the Mayor's Committee for People with Disabilities, the Newton Human Rights Commission, and fair housing advocates, among others.

The primary charge to the Task Force was to expand the analysis of obstacles to fair housing identified in the City's 1996 *Fair Housing Plan* and 2006 *AI* and then develop a *Fair Housing Action Plan* to help guide the City's fair housing efforts in the future. As part of the process, the Task Force examined existing preference policies for selection of local residents to affordable housing within the City, reviewed and proposed revisions to the Human Rights Commission's fair housing ordinance and studied trends in lending data. The Task Force commissioned audits to determine the extent of discrimination based on race, ethnic origin, family status, disability and participation in the Section 8 Housing Choice Voucher program in the City's rental and for-sale markets. The group studied the City's capacity to carry out its responsibility to assure that housing, community facilities, and public accommodations are constructed consistent with the architectural access requirements for people with disabilities in the Massachusetts Building Code. It considered the scope of civil rights requirements applicable to City housing-related activities such as Newton's first time homebuyer programs, fair access to housing developed with Community Development Block Grant, HOME, and Community Preservation Act funds.

In addition to the impediments listed in the *AI*, the Task Force identified the following barriers to fair housing in Newton:

- Acts of discrimination are a feature of the City's rental housing and for-sale markets and result at least in part from lack of knowledge about fair housing among landlords and tenants, and within the real estate industry.
- Improvements are needed in the enforcement of fair housing rights.

- Local preferences for selecting residents have been inconsistent across City housing programs, in some cases having the inadvertent effect of impeding diversity and fair housing.
- Fair housing access to City housing programs can be improved through a better understanding of the civil rights requirements applicable to the programs, and by developing a consistent fair housing framework across all programs.
- The City is failing in its obligation to carry out its responsibility to assure that housing, community facilities, and public accommodations are constructed consistent with the architectural access requirements for people with disabilities in the Massachusetts Building Code and related State and federal access regulations.
- The local lending industry can be a partner in encouraging diversity among Newton's homeowners.

D. Action Summary

The *Action Plan* consists of 12 specific recommendations for the City to act on in order to address the barriers to fair housing identified in the 2006 *AI* and the subsequent work of the Task Force. The plan is not the culmination of the City's commitment to civil rights and fair housing work but rather is the next step in creating an environment of greater fairness and diversity in Newton. The *Action Plan* organizes the 12 Action Steps into four major categories: *Organization, Staffing and Resources; Education, Outreach and Advocacy; Monitoring and Compliance; and Ongoing AI and other Research.* For each category, the *Action Plan* describes the Task Force's findings that are the basis of the recommended Action Steps. The recommendations in the *Action Plan* should be considered in conjunction with the chart that starts on page 19 ("Where Do We Go From Here?: Implementation of Plan") that identifies the individuals, organizations, and governmental entities who are "stakeholders" responsible for investigating, and if appropriate, implementing the Action Steps. The chart includes an estimated start and completion date for many Action Steps. (Some Action Steps are ongoing and end dates are not applicable.) Pairing actions with dates keeps the *Action Plan* up to date.

A. Organization, Staffing and Resources

1. Establish by Mayoral appointment a permanent fair housing entity and determine its organizational structure or governance. Recruit members from the Newton Human Rights Commission, Mayor's Committee for People with Disabilities, Newton Housing Partnership, Community Preservation Committee and Newton Housing Authority as well as realtors, lenders and housing developers. Provide staff assistance to the fair housing entity from the Planning and Development Department.
2. Assign sufficient staff and seek new outside resources such as grants and local and regional affiliations and partnerships to assure that the work of the fair housing group is carried out. Continue existing relationships with the Fair Housing Center, Disability Law Center and the Lawyer's Committee for Civil Rights and cultivate relationships with new Adaptive Environments' staff and others.

B. Education, Outreach and Advocacy

3. Continue to provide fair housing education for renters, homebuyers and owners through workshops, brochures, municipal websites, special events (such as the Fair Housing Month celebration), etc.

4. Work in partnership with the local real estate community to build awareness of fair housing requirements.
5. Work in partnership with other organizations and interests in the City to advocate for prompt action on those items stemming from the Housing Element of the *Comprehensive Plan* that are supportive in overcoming impediments to fair housing.
6. Establish relationships with lenders doing business in Newton so that fair housing issues in the lending industry can be part of an overall strategy for increasing fair housing actions in the City.
7. Continue marketing the availability of the City's Lead Paint Abatement Program.

C. Monitoring and Compliance

8. Assure comprehensive compliance with all applicable civil rights requirements within all City housing activities.
9. Develop a comprehensive integrated plan to assure compliance with all architectural access requirements within all City departments and the Newton Housing Authority.
10. Encourage self-monitoring by the real estate industry.
11. Promote the availability and usability of the City's intake, resolution and referral process for fair housing complaints.

D. Ongoing Analysis of Impediments and Research

12. Conduct periodic fair housing audits of the rental and for-sale markets to determine the efficacy of the *Action Plan*. Adjust *Action Plan* findings and actions to changed conditions identified in the audits.

Section II: Action Plan Principles

The Task Force developed the *Action Plan* in a multi-month process over the course of many conversations. In the development of the *Action Plan*, the Task Force was mindful of grounding their work within these operating principles:

- **To be useful, the *Action Plan* must extend its reach beyond meeting minimum fair housing requirements.**

The *Action Plan* is premised on the understanding that the work of achieving and sustaining a welcoming and diverse community must take place within the framework of existing civil rights laws. As such, the *Action Plan* takes as its beginning point, the fair housing obligations articulated in the City's Human Rights Ordinance, the City's responsibilities to affirmatively further fair housing in the allocation of federal community development and public housing funds, the requirements outlined in the federal Fair Housing Act and companion state laws, and other laws that affect civil rights considerations in the development and operation of housing. These legal authorities address fair housing based on race, color, religious creed, national origin, sex, age, genetic information, disability, ancestry, marital status, status as a family with children, veteran status, sexual orientation, and status as a recipient of public assistance including rental assistance. The *Action Plan* goes further than these minimum requirements by articulating a vision for the kind of community Newton seeks to become that is greater than the minimum legal requirements.

- **The *Action Plan* must highlight the importance of education and outreach in challenging impediments to fair housing.**

Landlords and renters, sellers and buyers, lenders and borrowers, real estate agents, public and quasi-public housing agencies, the private and nonprofit development community, elected officials, citizen bodies carrying out public functions, and City housing, development and human services personnel must all be knowledgeable about fair housing rights and responsibilities. This knowledge is imperative to create a fair housing ethic in all public and private housing transactions, including for sale and rental transactions, but also other housing-related activities including housing development, lending, and the promotion of affordable housing opportunities with the use of City resources and through the actions of City government.

- **The Action Plan must emphasize vigilance, accountability, compliance, and enforcement.**

Recognizing that complacency can undermine the ability to sustain a diverse and welcoming community free of discrimination, accountability is necessary to assure that housing activities are consistent with affirmatively furthering fair housing, and occur within the framework of fair housing and civil rights laws. Accountability includes Action Steps at the planning, permitting and construction stages of new housing units to assure the promotion of fair housing goals. It also includes ongoing monitoring, testing and other activities to assure compliance in all types of housing transactions. Finally, it also includes mechanisms by which allegations of non-compliance and discrimination can be investigated and resolved by mediation when possible, and referred for legal enforcement when necessary.

- **Implementing the Action Plan requires a spirit of cooperation and collaboration.**

Achieving the goal of a diverse, welcoming community free of discrimination is more than the work of government. Implementing the plan requires the active participation and collaboration of all elements of the City including public and quasi-public housing agencies, landlords and renters, sellers and buyers, lenders and borrowers, real estate agents, private and nonprofit development community, elected officials, citizen bodies carrying out public functions, and City housing, development and human services personnel.

- **Affirmatively furthering fair housing requires a commitment of resources.**

The *Action Plan* requires a commitment of resources to carry out the work of affirmatively furthering fair housing. Resources may be committed through a combination of contributions, including ongoing systems of accountability within and outside City government, allocations of public funds needed to carry out fair housing activities, contributions of funds from private sources, and the active contribution of time, expertise, and activities by public and quasi-public housing agencies, private individuals, real estate businesses, developers, landlords, and lenders.

Section III: Fair Housing Actions

A. Organization, Staffing and Resources

Findings

The creation of the Task Force in 2005 focused attention on the role of fair housing in evaluating Newton's commitment to providing a breadth of affordable housing opportunities. Since its inception, the Task Force has been instrumental in highlighting the importance of fair housing education and outreach and has been a leader in examining the institutional structures that discourage or prevent the achievement of community diversity.

The Task Force was never conceived as a permanent body, however, and as the nature of the City's fair housing work evolves from identifying impediments to affirmatively furthering fair housing, the role played in the past by the Task Force needs to be redefined and restructured for the future. Going forward, a permanent body needs to be established that provides the long-term vision needed to ensure that policies and practices related to fair housing are interwoven into the fabric of the community.

Action #1

Establish by mayoral appointment a permanent fair housing entity and determine its organizational structure or governance (e.g. committee, commission, board, etc.). Members should be drawn from the Newton Human Rights Commission, Mayor's Committee for People with Disabilities, Newton Housing Partnership, Community Preservation Committee and Newton Housing Authority as well as realtors, lenders and housing developers. Provide the fair housing body with ongoing staff assistance from the Newton Planning and Development Department. The mission of the new body will include activities such as:

- Promote, educate and advocate for fair housing activities in the community.
- Coordinate the fair housing-related activities of key City boards and departments (such as the Housing Partnership, the Housing Authority, the Community Preservation Committee, the Planning and Development Board and the Inspectional Services Department) to assure that City housing activities are carried out with a consistent civil rights focus.
- Review and comment on the City's Consolidated Annual Performance and Evaluation Report (CAPER).

- Evaluate and assure consistency in fair housing policy decisions within the City and its programs concerning such matters as local resident selection preferences, affirmative fair housing marketing of City housing programs, development of affordable housing, and civil rights compliance within City housing programs.
- Assist the City in meeting its obligations under the AI and accomplishing its fair housing planning objectives (including implementing the Fair Housing Action Plan).
- Assist the City in ensuring that fair housing objectives are identified and integrated across City departments.
- Assist the City in seeking financial resources and establishing outside partnerships to further fair housing objectives.
- Link the work of the City to regional fair housing activities.

Action #2

Assign sufficient staff and seek new outside resources such as grants and local and regional affiliations and partnerships to assure that the work of the fair housing group is carried out. Continue existing relationships with the Fair Housing Center, Disability Law Center and the Lawyer's Committee for Civil Rights and cultivate relationships with new Adaptive Environments' staff and others.

B. Education, Outreach and Advocacy

Findings

Under the leadership of the Task Force, the City hired the Fair Housing Center of Greater Boston (FHC) in 2005 to test the extent and nature of discrimination in the Newton rental market. The FHC conducted 24-paired tests at undisclosed agencies and housing management companies with units in Newton. The project was designed to test for discrimination based on familial status, reliance on public assistance or a rental subsidy, race (relative to African Americans) and national origin. Not dissimilar to regional testing results, the tests showed discrimination in 11 of the 24-paired tests conducted, or 45.8%. These findings led the Task Force to request additional funding from the City for further testing.

The following year the FHC conducted 10-paired tests at real estate agencies listing properties for sale in the City. This time, the FHC conducted testing for discrimination against African Americans and Latinos and found evidence of discrimination in four of the 10 tests they conducted. Three out of four tests revealed evidence of discrimination based on race or national origin and one illustrated evidence of discrimination based on familial status. The results of the FHC audits are attached to the *Action Plan* in Appendix A.

Later, the Disability Law Center, Inc. (DLC) was retained to test Newton's housing market for discrimination against people with disabilities. The 52-paired tests provided evidence of discriminatory actions against individuals based on their use of a wheelchair or because of impairment due to blindness, deafness, a development disability, mental illness or lack of mobility. In addition, non-paired tests were conducted to investigate whether housing discrimination exists in the form of failure to permit reasonable modifications to ensure accessibility of a housing unit and failure to provide reasonable accommodation in the housing search process. The results of the DLC audit are attached to the *Action Plan* as Appendix B.

Motivated by the results of the audits and in an early effort to improve knowledge of fair housing rights and responsibilities, the City, with assistance from the Task Force, applied for and received a Fair Housing Initiatives Program (FHIP) grant from HUD in 2006. The grant's service area is comprised of the 14 communities in the WestMetro HOME Consortium and the Brookline-Newton-Watertown Homelessness Consortium. Grant funds are used to increase compliance with the federal Fair Housing Act and with substantially equivalent State and local fair housing laws. The 18-month initiative, which concludes in June 2008, provides funding for significant fair housing education and outreach in the form of multiple training sessions; the development and distribution of fair housing brochures which have been

translated into Spanish, Chinese and Russian; and the development and implementation of a housing complaint processing system. The following Action Steps are intended to build on the knowledge gained from the audits and the work conducted to date under the FHIP grant.

In 2007, Newton adopted a new *Comprehensive Plan* that addresses many of the zoning and land use policy impediments identified in the Task Force's work, and in so doing, addresses the high cost of housing and lack of available land impediments, citing many of the same actions identified in the AI.

Action #3

Continue to provide fair housing education for renters, homebuyers and owners through workshops, brochures, municipal websites, special events (such as the Fair Housing Month celebration), etc.

- Encourage outreach and education at community events such as Newton Pride, Community Development Block Grant Week, etc. when fair housing literature can easily be distributed.
- Explore partnership(s) with the Newton-based Disability Awareness Institute for education and programming.
- Continue to provide training sessions for owners of rental properties to educate large and small property owners and managers about their obligations under fair housing laws. Such outreach programs could take the form of seminars, forums, and/or literature.
- Provide Newton homebuyer program materials (i.e. application and guidelines) in other languages and have these available on the City's website.
- Provide resources and training opportunities to City board and committee members so that they can stay informed on issues such as affordable housing, discrimination, and land use policies.
- Provide brochures describing the Newton complaint processing system in a variety of languages and have them available on the City's website.

Action #4

Work in partnership with the local real estate community to build awareness of fair housing requirements.

- Provide fair housing education for brokers and agents through workshops, brochures, municipal websites, special events.
- Provide Newton real estate agencies, property managers, and landlords with brochures or other literature in multiple languages containing information about the fair housing laws to distribute to all prospective tenants and homebuyers.

Action #5

Work in partnership with other organizations and interests in the City to advocate for prompt action on those items stemming from the Housing Element of the *Comprehensive Plan* that are supportive in overcoming impediments to fair housing, including:

- Reform Newton's inclusionary zoning provisions, making revisions to fair marketing and resident selection rules, making them consistent with those developed by the Fair Housing Task Force, and including density incentives for developments that exceed inclusionary mandates for affordability, along other improvements. Recommended resident selection rules are attached to the *Action Plan* in Appendix C.
- Support the principles of smart growth in the *Comprehensive Plan*.
- Revise zoning to more broadly allow mixed-income and affordable residential uses in non-residential districts.
- Broaden the range of explicitly permitted residential uses, especially for uses that expand housing choice such as single room occupancy, supportive housing, and others.
- Reconsider regulations on accessory dwelling units.
- Assure that the Community Preservation Act (CPA) stays intact in Newton.
- Adopt other suggestions of the Housing Element in the *Comprehensive Plan*, such as establishing a loan program for commercial-to-residential conversions and reviewing the inventory of real estate owned by the City to see if it could support housing development or adaptive reuse.
- Provide a waiver of City review fees in proportion to the share of affordable units in a development.

- Promote employer-supported affordable housing.

Action #6

Establish relationships with lenders doing business in Newton so that fair housing issues in the lending industry can be part of an overall strategy for increasing fair housing actions in the City.

- As part of updating the *Analysis to Impediments to Fair Housing Choice*, ask Newton lenders to describe the services and information they make available to populations not often targeted by the mortgage industry, particularly information on all mortgage products for which an applicant may be eligible.
- Increase opportunities to offer consumers the financial education that is critical to helping them obtain the knowledge and confidence they need to borrow money to purchase a home. Form partnerships with community organizations, religious institutions, employment centers and housing counseling agencies to provide or sponsor consumer education programs on bank products and services, financial management, savings and investment and/or credit.
- Continue to require participants in Newton's first-time homebuyer programs to attend homeownership classes prior to purchasing a home so that they are aware of the variety of mortgages available.
- Refer homebuyers utilizing the Newton first-time homebuyer programs to the information on mortgages on the Federal Reserve Bank of Boston website at <http://www.bos.frb.org/consumer/topics/mortgages.htm>.
- Continue to participate in the Massachusetts Community and Banking Council's "Don't Borrow Trouble" campaign by distributing English- and Spanish-language brochures on predatory lending. These brochures include a toll-free number (800-495-2265) which is answered by trained staff at the Massachusetts Division of Banks who can provide information, assistance and/or referrals to local community-based counseling agencies. Include information about the program on the City's website.
- Provide materials and assistance for City staff responsible for underwriting homebuyer loans to assure that they are aware of federal, state and local programs that are available to reduce the costs and risks of lending to customers who do not meet conventional underwriting standards. Lenders can also work cooperatively with public and private nonprofit organizations to create loan products that serve these customers.

- Increase public awareness of the importance of sound credit practices for all income brackets through a partnership of community-based organizations, local mortgage lenders, and real estate brokers.

Action #7

Continue marketing the availability of the City's Lead Paint Abatement Program. The federally-funded lead abatement program offers grants up to \$15,000 for income-eligible property owners to remove lead paint and/or asbestos hazards at their property. Although it violates fair housing law, landlords sometimes use the presence of lead paint as an excuse to not rent a unit to a family with a child or children under the age of six.

C. Monitoring and Compliance

Findings

The fair housing audits conducted for the City uncovered examples of housing discrimination based on race, ethnic origin, family status, disability, and participation in the Section 8 Housing Choice Voucher program. Based on these results, the Task Force concluded that achieving fair housing is accomplished also by creating and implementing systems for vigilance, accountability, compliance, and enforcement. The systems must have an outward focus and must provide assurance that monitoring for the presence of discrimination will occur and that mechanisms are in place to resolve incidents of housing discrimination, if necessary.

As a recipient of federal funds and a provider of public services, the City must comply with civil rights responsibilities that go beyond those applicable to the private housing market. The additional duties include compliance with the anti-discrimination requirements of Title VI of the 1964 Civil Rights Act, addressing discrimination based on race, color, and national origin in programs receiving federal funds, Section 504 of the 1973 Rehabilitation Act, involving discrimination based on disability in federally funded programs, and Title II of the Americans with Disabilities Act, outlawing disability discrimination in public services. These added obligations call for a special measure of vigilance, accountability, compliance, and enforcement within City housing activities.

- In focusing on City housing activities, the Task Force is especially concerned with what are perceived as fundamental weaknesses in Newton's capacity to carry out responsibilities under the State Building Code, the ADA, and Section 504 to assure that housing and the City's public works are built in a manner that is accessible to people with disabilities.

Action #8

Assure comprehensive compliance with all applicable civil rights requirements within all City housing activities.

- Allocate sufficient resources to create the position of Civil Rights Coordinator in connection with the citywide fair housing group and empower the Coordinator to monitor for and assure compliance with the relevant civil rights requirements applicable to City housing activities.
- Referencing the Civil Rights Access Checklist, contact all City departments, boards and the Newton Housing Authority to inform them

about applicable fair housing and architectural access requirements and offer assistance in developing individual compliance plans.

- Base compliance activities on the results obtained from use of the Checklist.

Action #9

Develop a comprehensive integrated plan to assure compliance with all architectural access requirements within all City departments and the Newton Housing Authority with the following elements:

- Develop procedures for assigning responsibility for and carrying out architectural access requirements within all branches of City government. Technical assistance and facilitation for developing such procedures and gaining their adoption could be provided by a consultant having expertise in that area. Representatives of the city-wide fair housing group and the Mayor's Committee for People with Disabilities should also be involved.
- Dedicate no less than half a full time staff person in the Inspectional Services Department with responsibility for assuring compliance at the time of plan review, issuance of permits, construction, or issuance of certificates of occupancy, and for conducting ongoing monitoring and compliance.
- Continue to train key personnel in City departments on architectural access regulations. On an as-needed basis, ensure relevant staff are current in housing accessibility and accessibility in public accommodations requirements and receive hands-on training in reviewing plans including actual projects and site visits, involving participant observation by trained personnel (or consultant).
- Require projects covered by architectural access laws to have plans and the resulting development certified as compliant by an architect or engineer having expertise in architectural access regulations.
- Establish a basis for assigning responsibility and accountability for post-occupancy inspections to a designated City department. Assign responsibility for annual reporting on architectural access compliance to that department. Provide for annual reports to the City-wide fair housing group, the Mayor's Committee, the Human Rights Commission, and HUD (in the context of Annual Performance Reviews submitted for the Consolidated Plan). Provide for refresher training. Make adjustments in the protocol to assure continued effectiveness.

- Adopt one or more ordinances implementing the foregoing initiatives. This includes identifying responsibilities and accountability for projects to meet architectural access standards.

Action #10

Encourage self-monitoring by the real estate industry.

- The City should encourage real estate agencies and management companies to conduct and/or contract for self-compliance testing of their agents and brokers. Real estate agencies should create, adopt, and implement formal policies to ensure consistent practices within a real estate office and/or brokerage.
- Assist real estate agencies in their efforts to comply with all state and federal fair housing laws. Real estate agents are responsible to provide the same information about available homes regardless of the home seeker's race, national origin, familial status, source of income, or membership in any of the protected classes under federal and state fair housing laws.

Action #11

Promote the availability and usability of the City's intake, resolution and referral process for fair housing complaints. The Newton Human Rights Commission, with the support of the Task Force, has developed a formal housing discrimination complaint process and appropriate forms. In order to be effective, City staff must be responsible for actively marketing Newton's housing complaint system and complaint hotline. The contact information should be made widely available through notices in local papers, the City's websites, fair housing posters in real estate offices, and other venues. In addition, staff time needs to be dedicated to field calls for assistance and complaints, to provide information to the public on fair housing rights and responsibilities, and to perform the various responsibilities assigned under the complaint process.

D. Ongoing Analysis of Impediments and Research

Findings

HUD requirements for the AI require a periodic review of the barriers to fair housing, and regular adjustments to fair housing actions in response

to changed community conditions. A similar level of attention should be paid to the dynamics of fair housing in the City.

Action #12

Conduct periodic fair housing audits of the rental and for-sale markets to determine the efficacy of the *Action Plan*. Adjust *Action Plan* findings and actions to changed conditions identified in the audits. The Action Plan may be revised to reflect to changes affecting the 12 action items but no less than every five years with the development of the City's Consolidated Plan.

Section IV: Where Do We Go From Here? Implementation of Plan

The following chart identifies the 12 action steps included in the Fair Housing Action Plan and identifies who has principal responsibility for implementing the plan, who the lead stakeholders are who need to be included in the implementation process, a timeframe for implementation and the resources required to undertake and complete each action step.

A. Organization, Staffing and Resources				
Action steps	Lead responsibility for implementing	Stakeholders and contributors to implementation process	Estimated start and end dates	Resources needed to implement action step
1. Establish permanent fair housing entity in the City, authorized to coordinate fair housing-related activities of key City boards and departments.	Mayor; depending on governance structure, Aldermanic approval will be necessary to establish a commission	Housing Office staff, Law Department staff, Fair housing entity, Force, Newton Housing Partnership, City department heads.	6/2008-6/2009	Housing staff time
2. Assign sufficient staff resources and seek outside resources to continue the work of the fair housing entity.	Planning and Development Director	Housing Office staff, Health and Human Services staff, Executive Office (City budget)	Ongoing; confirm continuing commitment with applicable department heads	Financial resources to make housing and health and human services staff time available.
B. Education, Outreach and Advocacy				
3. Continue to provide fair housing education and outreach.	Housing Office staff	Fair housing entity, local housing and service providers	Ongoing	Financial resources to make housing staff time available.
4. Initiate action on recommendations in the Housing Element of <i>Comprehensive Plan (2007)</i> that have fair housing implications.	Fair Housing entity	Planning and Development Director and staff, CPA Manager, Newton Housing Partnership, Board of Aldermen,	Ongoing	Financial resources to make Planning and Development staff time available.

Action steps	Lead responsibility for implementing	Stakeholders and contributors to implementation process	Estimated start and end dates	Resources needed to implement action step
5. Work with the real estate community to increase awareness of fair housing requirements.	Housing Office staff		Ongoing	Housing staff time
6. Engage key lenders in making mortgage products more available to income-eligible buyers.	Housing Office staff		Ongoing	Housing staff time
7. Continue funding and increase marketing of the City's Lead Paint Abatement Program.	Mayor	Planning and Development Director/Associate Director for Housing and Community Development	Ongoing	City's commitment to continue to fund a lead paint abatement program out of CDBG funds. Also, continued availability of CDBG funds.
C. Monitoring and Compliance				
8. Develop a comprehensive and integrated plan to assure compliance with all architectural access requirements within all City departments and the Newton Housing Authority.	Mayor's Office, supported by a consultant with expertise in applicable state and federal architectural access requirements.	Fair housing entity, Newton Housing Authority, all City departments including the Planning and Development Department, Inspectional Services Department, Public Works Department, Mayor's Committee for People with Disabilities, Human Rights Commission	2008-2009	Financial resources to secure consultant services; allocation of staff time (Housing Office, Health and Human Services, Inspectional Services Department)
9. Fund the Civil Rights Coordinator position in order to assure compliance with all applicable civil rights requirements within all City housing activities.	Executive Office (to approve and fund Civil Rights Coordinator position)	Board of Aldermen (budget line item), fair housing entity, all City departments, Housing Office staff	2009-2010	City funds to support a new FT or PT position, Civil Rights Coordinator.

Action steps	Lead responsibility for implementing	Stakeholders and contributors to implementation process	Estimated start and end dates	Resources needed to implement action step
10. Encourage self-monitoring by the real estate industry.	Newton-based real estate brokers; brokers doing business in Newton	Housing Office, fair housing entity Continue partnerships with the Fair Housing Center and the Disability Law Center	Ongoing	Financial resources to make housing staff time available.
11. Promote the availability and usability of the City's processing system for fair housing complaints.	Health and Human Services 504/ADA Coordinator	Housing Office, Human Rights Commission, Mayor's Committee for People with Disabilities	Ongoing	Financial resources to make housing and health and human services staff time available.
D. Ongoing AI and Research				
12. Initiate and conduct periodic fair housing audits of the rental and for-sale markets in Newton	Fair Housing entity.	Housing Office, outside consultants, fair housing entity, Mayor	Periodic, all topics covered once each decade.	Financial resources to pay for testing.

Appendix A

Fair Housing Center of Greater Boston Housing Discrimination Audit Report to the City of Newton

Newton's 1996 Fair Housing Plan concluded that economics rather than discrimination decides who lives in Newton. This statement may not be entirely accurate. Though economics is a major factor it is not the only one. The perception from outsiders may be that Newton is not open and welcoming to people of all types and income levels. Though there is little evidence to show that housing discrimination is occurring within the City of Newton, testing and monitoring have not been conducted to reveal discriminatory practices that may be happening.

— from the City of Newton FY06-10 Analysis of Impediments to Fair Housing Choice, May 2005.

Intent on determining the extent and nature of discrimination present in the Newton housing market, the Newton Fair Housing Task Force contracted with the Fair Housing Center of Greater Boston (Fair Housing Center) to conduct testing in the city. This contract is the first the Fair Housing Center has conducted with a municipality in our service area of 147 cities and towns. The Fair Housing Center commends the City for seeking this depth of analysis and for including private market considerations in the Analysis of Impediments to Fair Housing Choice. This report presents a summary of the methods the Fair Housing Center used in conducting the investigations; describes the laws and regulations relevant to the investigations; details the findings with information on the occurrences of discrimination and examples of the types of discriminatory behavior encountered by testers; discusses the presence of discrimination in the region's housing market; and offers a series of recommendations for further action.

Summary of Rental Audit Findings

During the months of September and October 2005, the Fair Housing Center conducted twenty-four paired rental tests at real estate agencies and management companies with units in the City of Newton. The tests were designed to reveal whether their rental practices show any signs of discrimination against prospective tenants. The Fair Housing Center conducted testing for discrimination against four protected classes, familial status, source of income involving Section 8 vouchers, race involving African Americans, and national origin with different national origin backgrounds. Overall, rental testing showed discrimination in 11 of the 24 paired tests conducted, or 45.8%.

Summary of Sales Audit Findings

In January and February 2006, the Fair Housing Center conducted 10 paired sales tests at real estate agencies listing properties for sale the city of Newton. The Fair Housing Center conducted testing for discrimination against African Americans and Latinos. Overall, the Fair Housing Center found evidence of discrimination in 4 of the 10 tests conducted. 3 revealed evidence of discrimination based on race or national origin. A fourth test showed evidence of familial status discrimination in the form of a discriminatory statement made to one tester.

About Testing

Testing is a controlled method of measuring and documenting variations in the quality, quantity and content of information and services offered or given to various home seekers by housing providers. Quite simply, a test is designed to reveal differences in treatment and to isolate the cause of that difference. A proven tool for discovering the presence of discrimination, testing has become a common and accepted practice in several arenas. Testing is used for self-compliance monitoring by the real estate industry and lending institutions. Many real estate agencies and management companies use 'shopping services,' a form of testing that allows them to determine if their leasing staff are complying with fair housing laws. Additionally, testing is used to determine whether or not there is evidence to support an individual's claim of discrimination. The legitimacy of testing evidence in housing discrimination cases has long been upheld by the courts. In several cases, including *Strong V. Chatsford Manor Apartments*, *Havens Realty Corporation v. Coleman*, and *City of Chicago v. Matchmaker Real Estate*, courts all the way up to the Supreme Court have accepted testing evidence as useful and valid evidence in support of a plaintiff's claim of discrimination.

A testing audit is a systematic investigation of discrimination in the housing market for the purpose of gauging the prevalence and types of discrimination at play in the market at a given point in time. In order to address housing discrimination - both in terms of education and enforcement - we need an accurate picture of how it occurs, who it affects, and where it is happening. As has been proven elsewhere in the country, an audit is one of the most effective tools for taking a community's discrimination temperature. The findings establish a foundation for future education and enforcement efforts and serve to heighten awareness among home seekers and housing providers of their rights and obligations under existing fair housing laws.

The Fair Housing Center of Greater Boston's Testing Program

The Fair Housing Center conducts tests with matched pairs of testers – commonly called a paired test. Testers are matched on personal and home seeking characteristics so that the only significant difference between them is the factor being tested. In each pair, the subject tester is assigned characteristics that make him or her slightly more qualified than the control tester. For example, the person of color would have a higher mortgage amount approved than the white tester or the tester who is a parent would have a higher income than the childless tester.

The Fair Housing Center trains volunteers to conduct tests by impartially recording the facts of their interactions with a housing provider. Fair Housing Center staff members provide all testers with standardized training that emphasizes the role of testers as objective fact finders. To ensure the objectivity of the test results, testers are not told what form of discrimination they are testing. Each tester separately calls or visits a housing provider and records his or her experience. Testers complete detailed written narratives documenting their experiences and debrief orally with the Test Coordinator. The Test Coordinator then compares the documented experiences of each tester in the pair to determine whether or not there are differences in the treatment, information given and/or service provided. In tests where the Test Coordinator finds differences, the Coordinator then analyzes these differences to determine whether or not the differences are violations of federal or state law.

Applicable laws

Housing discrimination is defined largely by the Fair Housing Act of 1968 (Title VIII) and the Fair Housing Act Amendments of 1988 (42 USC § 3601 et seq.). According to the law, it is illegal to discriminate against someone because of their race or color, national origin, sex, religion, familial status (families with children) and disability. In Massachusetts, as in many other states, housing discrimination is also prohibited under state law. Chapter 151b of the Massachusetts General Laws largely mirrors the federal law, but adds certain bases: marital status, sexual orientation, veteran status, age, and source of income (receiving welfare or some other public assistance and/or have a housing subsidy) to the list of protected classes.

According to the law, housing providers are prohibited from the following actions because of a person's membership in a protected class:

- ◆ Refusing to rent, sell, or negotiate for housing on the basis of the characteristics of a protected class;
- ◆ Making housing unavailable or deny that housing is available;

- ◆ Setting different terms, conditions or privileges for the sale or rental of housing;
- ◆ Denying or making different terms or conditions for a mortgage, home loan, homeowners insurance or other real estate related transaction;
- ◆ Advertising housing for rent or sale in a way that is discriminatory;
- ◆ “Blockbusting for profit”; persuading owners to sell their homes by telling them minority groups are moving into the neighborhood; or
- ◆ Threatening, coercing or intimidating anyone attempting to exercise his or her fair housing rights.

In addition, the Massachusetts Lead Law prohibits landlords from denying a unit to a family because of the presence of lead paint. The law requires that landlords have their units de-lead before renting to families with children under the age of six.

Rental audit methodology

For this project, the Fair Housing Center selected real estate agencies both located in the city of Newton and real estate agencies located out of the city but providing listings for homes in Newton. In order to select real estate agencies, the Fair Housing Center conducted extensive research on the internet and yellow pages to create a list of real estate agencies providing services in the city and of currently available property listings. Some larger agencies with multiple listings were tested more than once for different protected categories.

The Fair Housing Center conducted a total of 24 paired rental tests of 18 real estate agencies and management companies serving the city of Newton. The Fair Housing Center conducted 6 paired tests for four different protected classes: race, national origin, source of income, and familial status. Tests for familial status and source of income were conducted via telephone. Tests for race involving African Americans and national origin involving Latinos and Caribbean Americans were conducted by testers meeting with agents to reveal their race or national origin in person.

Rental Audit Findings

Of the 24 paired tests conducted, 11 revealed evidence of discrimination. (45.8%)

Three out of six real estate agencies demonstrated evidence of discrimination based on race. (50%)

Four out of six real estate agencies demonstrated evidence of discrimination based on national origin. Two cases were involving Latino Americans and two cases were involving Caribbean Americans. (66%)

Two out of six real estate agencies demonstrated evidence of discrimination based on familial status. (33%)

Two out of six real estate agencies demonstrated evidence of discrimination based on source of income involving Section 8 housing voucher. (33%)

Examples of discriminatory behaviors: rental

Compared to the overt practice of the past, discrimination today is often more subtle and revealed only through testing. Of the 24 paired test in this project, there was not a single instance in which one of the testers was told outright that he or she was being turned away because of race, national origin, source of income, or familial status. However, analysis of testing evidence shows that more subtle forms of discrimination still exist in the city of Newton. The Fair Housing Center found the following examples of differential treatment while conducting this audit.

Access to apartments (424SC§3604(d) violations)

The most common discriminatory behavior was agents providing false information about the availability of apartments. This occurred in 6 of the 24 paired tests. In four instances, the control testers were told about more units, sometimes as many as 5 or 6 units more, than their protected class counterpart. This included one instance in which the protected class tester was told there were no apartments available, while their test counterparts received information on available units. This occurred for all protected classes: race, national origin, familial status, and source of income.

In one national origin test, the Latino tester and the white tester both emailed the agent and left voice messages. The white tester received an email back from the agent that included photos of an available apartment. She was also able to make an appointment to see the apartment. However, the Latino tester never received any type of response from the agent.

In another example, the African American tester was told that the apartments she had seen were not available until January 1st. The white tester was told the same apartment was available on December 1st. In this test, both testers inquired about December 1st rentals.

Different terms and Conditions (424SC§3604(b) violations)

There were two examples of a real estate agent setting different terms and conditions based on race/national origin. In one test, the agent offered the white tester a discount on the rent amount. The African American tester was not told about this discount but instead was told that there was \$10 application fee.

In another test, the agent quoted \$75 higher monthly rent to the Latino American tester than to the White tester. The agent also offered move-in special of half a month's rent free for the first month to the white tester only. In the same test, the Latino American tester was told that a security deposit was required whereas the white tester was told that a security deposit was not required to rent. Had these been actual home seekers the Latino tenant would have paid \$2,850 more than the white tenant for the first year in the same apartment.

Discriminatory Statements (424SC§3604(c) violations)

During one of the race tests, the tester whose profile was single white female was told that this agency does not rent units to families with children and college students while explaining that the apartment was quiet.

Other Differences in Treatment: rental

While not violations of the law on their own, testing revealed some common practices that served to decrease the chances of finding housing for members of protected classes. For example, some agents had control testers leave their names and phone numbers in order to follow up with them in case new listings came in, but did not ask protected class testers to do so. Other agents only offered their business card to control testers and encouraged them to call back if they wanted to apply for the apartments. In one situation, the white tester received a follow up call from the realtor the next day encouraging her to apply for the apartment. The Caribbean American tester received no such call.

During one source of income test, the agent said he would get back to the tester after checking whether the owner would accept Section 8. If indeed the agent was abiding by the owner's discriminatory preference to refuse Section 8, this would violate the law.

Sales audit methodology

Selection of sites and type of test. The audit consisted of 10 paired tests conducted in January and February 2006. The Fair Housing Center tested five franchise real estate companies with a large number of listings, as well as two smaller local real estate offices with relatively fewer properties for

sale. The Fair Housing Center conducted eight tests for racial discrimination by pairing white and African American prospective home buyers and two tests for national origin discrimination with paired white and Latino American home buyers. Testers were assigned to contact real estate agents about specific properties on the market. Six pairs inquired about available houses costing \$700,000 to \$800,000 and four pairs inquired about condominiums for \$450,000 to \$500,000. To initiate each test, both testers called the real estate office about a specific property listed on Boston.com or in the *Boston Globe*. Each tester asked for the listing agent for that home by name. If the agent was unavailable at the time of the call, each tester left a detailed message and expressing interest in the particular home listed for sale.

Sales Audit Findings

Of the 10 paired tests conducted, 3 revealed evidence of discrimination based on race or national origin. (30%) A fourth test showed evidence of familial status discrimination in the form of a discriminatory statement made to one tester.

Two out of two tests pairing Latino and white homebuyers showed evidence of discrimination based on national origin. (100%)

One out of eight tests pairing African American and white homebuyers showed evidence of discrimination based on race (13%), while four out of these eight tests offered more information to the African American homebuyer compared to her white counterpart. (50%)

All of the examples of discriminatory behavior based on race or national origin took place with homeowners seeking to purchase a single family home. None occurred with homeowners seeking to purchase condominiums. The one test showing evidence of familial status discrimination involved a white family seeking to purchase a condominium.

Examples of discriminatory behaviors: sales

Access to homes (424SC§3604(d) violations)

There was one test in which the white homebuyer was shown a property that the African American homebuyer was not shown, despite numerous attempts. After making an appointment to meet the agent at the house, the African American tester waited outside for an hour. The tester called the agent three times, each time leaving a voicemail stating that she was waiting for her at the appointment site. While she was waiting, the residents of the house, who were white, were leaving and asked the tester what she was doing. When the African American tester said she was waiting for the agent to look at the house, the residents said that she should keep waiting for the agent and left the house. The agent never arrived.

Three days later, the realtor returned her messages. The tester asked to reschedule and see the house during the week. The realtor refused to show the house on a weekday and proposed an appointment the following Saturday. In contrast, the white tester called the same agent approximately half an hour later and was able to make an appointment for the very next day, a weekday, three days earlier than African American tester's appointment.

The white tester also arrived at the home before the realtor and the residents of the house asked the tester why she was there, and then invited her in and gave her a tour of their home. Shortly thereafter, the realtor called the African American tester to cancel her Saturday appointment, saying she had a buyer who was willing to make an offer. The African American tester was never able to speak with the realtor in person or see the interior of the home.

In addition to this example, there were two tests where the agent either sent listings to the white tester or told the white tester to register on a website to be emailed listings automatically. These agents did not even mention to the Latino testers the possibility of seeing more listings online. As a result, the white homebuyers had access to more than 50 listing in their price range whereas the Latino homebuyers did not have any access to those listings. The agent offered to serve as a buyer's agent for both of the white homebuyers and made follow up calls offering to show them additional properties. The Latino homebuyers received no such follow up assistance.

Provision of Services in a Real Estate Related Transaction (424SC§3605 violations)

A matched pair of a white tester and a Latino tester saw the same realtor. The realtor pursued the opportunity to be the buyer's agent for white tester but did not do the same for the more qualified tester of color. Furthermore, the agent made a discouraging statement to tester of color, saying the property was overpriced. The agent made no such comment to the white tester, instead promising that as her buyer's agent, he would look out for the buyer's best interest, including negotiating the price of the house.

In another instance, the agent explained the mortgage pre-approval process to the white homebuyer and recommended a mortgage broker that the agent said she and her family worked with closely. The agent did not talk about mortgage pre-approval at all with the Latino tester or offer a recommendation for a mortgage broker.

Discriminatory Statements (424SC§3604(c) violations)

Although the design of the testing looked for race and national origin discrimination, it also uncovered an incident of familial status discrimination.

Because our testers were seeking to buy single family home, each tester told the agent that they were married, and each tester had had one or two children, depending on the size of the home they were assigned to seek. In one instance, the agent told the white tester that “this property is not good for families with children.” Although there was no evidence of discrimination based on race or national origin, this statement clearly demonstrates evidence of discrimination based on familial status and lack of knowledge about fair housing law.

Other Differences in Treatment: sales

Affirmative Marketing to African Americans: In four out of 10 paired tests, agents offered more information and services to the African American tester over the paired white tester. Each of these four African American testers received more listings from the agent than the matched white testers, and one African American tester was shown three more houses than the matched white tester. All four African American testers also received a follow up call or email from the agent after their appointment, but none of the matched white testers received any form of follow up. In two of these tests, the agent offered to be a buyer’s agent for the African American tester, but not the white tester. And in one test, the agent invited the African American tester to the real estate office and gave her a press kit, which contained various helpful brochures about the agency, agent agreement, mortgage information, and further information about the city of Newton including a map. The agent did not invite the white tester to the office or give her any of those materials.

Two of these instances occurred at real estate agencies where other tests revealed evidence of discrimination. These findings underscore the need for agencies to have consistent practices regarding the information and services offered to all homebuyers. In a region and housing market where homebuyers of color have been disadvantaged, it is appropriate and even welcome to provide affirmative marketing for homebuyers of color such as multiple listings in their price ranges, follow up calls and emails from agents, informational brochures and marketing materials, and offers for the services of a buyers agent.

Regional trends: housing discrimination in Greater Boston

Greater Boston has an increasingly diverse and persistently segregated population. When discussed, this segregation is generally attributed to the high cost of living in the region. However, affordability alone does not account for residential segregation. In truth, our data analysis and discrimination testing studies show that discrimination is a significant factor.

Diversity and Segregation Although the region has diversified in recent years, Greater Boston remains one of the nation's most segregated housing markets for African Americans and Latinos. Several studies have documented continued concentration of African American and Latino homebuyers. Notable among these was a study of HMDA (Home Mortgage Disclosure Act) data for the years 1993 to 1998 by Guy Stuart, which found that although people of color were moving out of the city of Boston they were concentrating in a very limited number of communities. Stuart found that 49 percent of the homes purchased by homebuyers of color were in only *seven* of the 126 towns covered by the study. Newton is not one of those cities.

An analysis of 2000 census population data published in 2002 by the Harvard Civil Rights Project showed that even as the population of color in the city of Boston was "soaring," the rate of segregation had actually increased, leaving the Boston region "the third 'whitest' of all large metropolitan areas – behind Pittsburgh and Minneapolis." According to this report, the immigrant and non-white population remains concentrated within a "multi-ethnic core" in Boston, as well as "satellite cities surrounded by overwhelmingly white outer suburbs." As noted in the City's Analysis of Impediments to Fair Housing Choice, Newton's Asian and Latino populations grew and African American and white populations shrank during this time period.

Affordability The Greater Boston region also remains one of the nation's most expensive places to live. In political debate, municipal planning, and everyday social conversation, high housing costs commonly blamed for residential segregation. Indeed, this theme is echoed in the substance and narrative of the City's Analysis of Impediments to Fair Housing Choice. While there can be no denying that high housing costs are limiting options for many residents, it is a questionable explanation for the extent and degree of racial concentration. In 2003, Fair Housing Center Director David Harris co-authored a study with Nancy McArdle of the Harvard Civil Rights Project to test the common explanation that people of color simply cannot afford to buy homes in our suburbs. The paper, "More than Money," analyzed census data on homeownership and HMDA data on recent mortgages to determine the extent to which the region's ongoing segregation can be explained by a disparity in the values/prices of homes people of color own and those owned by whites. The study found that African American and Latino homebuyers are greatly over-represented in certain areas, even after accounting for affordability. Yet in 80 percent of cities and towns, the number of African American and Latino homebuyers was *less than half* what would predict based on affordability alone. In Newton, African Americans are underrepresented by 48.9% and Latinos by

42.9%. The simple notion of “affordability” does not explain the ongoing and frequently documented patterns of racial concentration and segregation.

Discrimination The “More than Money” paper raised a critical question: if not affordability, what is causing the persistent pattern of concentration? Prompted by this question, the Fair Housing Center conducted two phases of sales discrimination testing during 2004 and 2005. These investigations revealed that African American and Latino homebuyers experience disadvantageous treatment in just under half of their attempts to purchase homes in Greater Boston’s suburbs. In September of this year, the Fair Housing Center released these results in the report, “You Don’t Know What You’re Missing.”

These findings were consistent with findings from our previously released studies showing that discrimination limits housing choice in the greater Boston rental market. In 2001, the Fair Housing Center released our first testing audit of the greater Boston area, “*We don’t want your kind living here.*” This audit tested for discrimination based on race (African American), familial status (the presence of children), and source of income (receipt of rental assistance). Specifically, 55% of the race tests showed evidence of discrimination against African Americans, 60% of testers with rental subsidies experienced discrimination, and 67% of testers with children experienced discrimination. In 2002 the Fair Housing Center released our second rental discrimination audit, “*Acceso negado/Access denied,*” which documented discrimination against Latinos in 52% of their attempts to rent housing in greater Boston. Both audits tested in Boston and its immediate suburbs. The Fair Housing Center conducted a third audit of the of the greater Lowell and Merrimack Valley rental housing market in 2004. This testing showed evidence of discrimination against Latinos at 67%, African Americans at 52%, Asian Americans at 38%, and families with children at 33%.

A solid body of research by the Harvard Civil Rights Project, Massachusetts Community and Banking Council, and others documents continuing patterns of residential segregation that socially and economically disadvantage African American and Latino residents in the region. While these studies do not name causes for these patterns, the Fair Housing Center’s discrimination testing audits have confirmed that racial discrimination is significant factor; more the norm rather than the exception for people of color attempting to rent or purchase homes in our region.

As stated in the introduction to this report, Newton is the first municipality to contract with the Fair Housing Center to test for discrimination in private market real estate practice. This forethought is commendable and should serve as an example to other municipalities wishing to prevent and respond discriminatory practices and their widespread effects. Our findings show

that on average, rates for discrimination are slightly lower in Newton than in the region as a whole. Still, as stated on page 22 in the Analysis of Impediments to Fair Housing Choice, “the fact that any discrimination based on race...on any level exists in the City of Newton directly conflicts with the City’s commitment to providing safe affordable housing for all residents, regardless of race...” City officials must continue this course of action to lead the City’s real estate businesses, nonprofit agencies housing providers, and residents to eliminate acts of discrimination and promote Newton as an open and welcoming community.

Recommendations

State and Federal fair housing laws protect all of us from discrimination that keeps us from accessing the housing of our choice. The laws are intended, among other things, to permit everyone to enjoy the social and economic benefits of living in integrated communities. Discrimination in housing not only takes away our freedom to choose where we live, it also limits the variety of people with whom we can interact and the opportunities available to us in our own neighborhoods. Where we live often determines the quality of our children’s education and our access to jobs, as well as other aspects of our health and well-being. Many people are not aware that housing discrimination continues to be present in our region and nation. Nor are they aware of their rights and responsibilities as home seekers and as housing providers.

Unfortunately, enforcement of anti-discrimination laws is complaint-driven and relies upon individuals to file complaints when they suspect they have encountered discrimination. Individuals cannot always know that they have been subjected to discriminatory practices, and even if they know, they may feel too busy with their housing searches to file complaints. Housing discrimination is under-reported and therefore, often unaddressed. Thus, larger patterns of community segregation remain unchanged, and residents of good will throughout the region interpret the lack of overt evidence of discrimination to mean that discrimination does not occur within their communities. One of the purposes of this and all Fair Housing Center publications is to initiate and inform a dialogue to work for change. Toward this end, we make the following recommendations based on the audit findings.

- The City should provide or contract for comprehensive fair housing training for real estate agencies to ensure that they are aware of their responsibilities under the fair housing laws. Training should emphasize that real estate agents are responsible to provide the same information about available homes regardless of the home seeker’s race, national

origin, familial status, source of income, or membership in any of the protected classes under federal and state fair housing laws.

- Training for real estate agencies should include strategies for how to deal with landlords and sellers who make discriminatory requests to agents. Agents are liable for acting upon owners' requests that are in violation of fair housing laws, and may have standing to file complaints themselves when discriminatory practices hinder their work..
- Real estate agencies should create, adopt, implement, and monitor formal policies to ensure consistent practices within a real estate office and/or brokerage.
- The City should periodically contract for further testing of real estate practices, including private brokerages and publicly funded properties.
- The City should encourage real estate agencies and management companies to conduct and/or contract for self-compliance testing of their agents and brokers.
- The City should initiate outreach programs for the owners of rental properties to educate large and small property owners about their obligations under fair housing laws. Such outreach programs could take the form of seminars, forums, and/or literature.
- The City should provide agencies doing business within the city with brochures or other literature containing information about the fair housing laws to distribute to all prospective tenants and homebuyers.
- The City should dedicate staff time to field calls for assistance and information about possible discriminatory acts within the City. Staff should be trained to provide information and assistance to home seekers and housing providers about their rights and responsibilities under the law and means for resolving discrimination complaints. The contact information for this office should be made widely available through publishers notices in local papers, fair housing posters in real estate offices, and other materials.
- The City should continue to implement its Work Plan for Complaint Recording and Reporting System, as referenced in the May 2005 Analysis of Impediments to Fair Housing Choice. This system should coordinate inquiries from housing providers, public and private service organizations, and municipal departments as well as from the community at large. With dedicated staff time named above and referral protocols described below, this system increases the City's ability to provide consistent and comprehensive assistance for anyone seeking fair housing information or remedy.

- The City should establish a complaint referral protocol with the Fair Housing Center of Greater Boston. Already in place with other public and private entities, this protocol provides training for staff on how to recognize possible discrimination and a mechanism to refer cases to the Fair Housing Center for investigation including testing where appropriate, and representation through mediation and/or filing a complaint. This protocol will directly enhance the effectiveness of the Work Plan for Fair Housing Complaint Recording and Reporting System.
- Either as part of the Work Plan for Complaint Recording and Reporting System or directly, the Newton Housing Authority should establish a complaint referral protocol with the Fair Housing Center of Greater Boston. The Fair Housing Center has such protocols already in place with other public and private Section 8 administrators in the region. The services described above not only assist housing authority tenants, but the authority itself, since source of income discrimination interferes with the authority's leasing practices.
- The City should clarify the role of the Human Rights Commission concerning fair housing enforcement. The Cities of Boston and Cambridge have gone through multi-year government processes to be certified by HUD as providing substantially equivalent enforcement services. They therefore can adjudicate fair housing complaints in their jurisdiction. If Newton wishes to pursue this status, it will require a significant commitment of time, training and resources. Unless or until Newton has achieved this status, the City should rely on the complaint referral protocol system described above to address all fair housing complaints.
- The Fair Housing Task Force should partner with the Human Rights Commission to sponsor public education forums on housing discrimination and diversity. Like in other communities with active commissions, the Newton Human Rights Commission can educate local residents and real estate professionals on fair housing laws, create opportunities for dialogue on diversity to proactively promote Newton as an open and welcoming community, and dispel the common assumption that affordability is the sole factor limiting diversity. Materials such as the PBS Series *Race the Power of An Illusion* or the Harvard Civil Rights Project report *We don't feel welcome here* are two possible resources for prompting public dialogue.

Appendix B



**Disability Discrimination Audit
of the Housing Market of
Newton, Massachusetts**

FINAL REPORT

January, 2007

The Protection and Advocacy System for Massachusetts



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EXECUTIVE SUMMARY

Findings Overview

DLC's Disability Discrimination Audit of the Newton, Massachusetts housing market revealed significant barriers to equal housing opportunities for individuals with disabilities across all disability categories. Compared to home seekers without disabilities, individuals with disabilities face discrimination by private landlords, real estate agents and providers of non-subsidized housing at rates that meet or exceed those encountered by members of other protected categories.¹

Eighteen years after the Fair Housing Act was amended to include disability as a protected category, and twenty-three years after Massachusetts included disability as a protected category in its anti-discrimination statute, 48 percent of tests exposed evidence of discrimination. Although the rates of discrimination vary widely by type of housing sought, the audit shows that much work needs to be done to eliminate discrimination toward individuals with disabilities seeking to live in Newton.

- **Overall, evidence of discrimination was found in 48% of the 52 tests conducted.**
 - **Of tests conducted involving private, non-subsidized rental housing, evidence of discrimination was found in 54%.**
 - **Within private, non-subsidized rental housing, evidence of discrimination in the form of differential treatment was found in 67%.**
 - **Within private, non-subsidized rental housing, evidence of discrimination in the form of a failure to provide reasonable accommodation was found in 36%.**
 - **Within private, non-subsidized rental housing, evidence of discrimination in the form of a failure to allow reasonable modification of a unit was found in 40%.**
 - **Of tests involving subsidized rental housing, no evidence of discrimination was found.**
 - **Of tests involving properties for sale in Newton, evidence of discrimination was found in 62.5%.**

¹ Compare results discussed herein with findings of the Fair Housing Center of Greater Boston's *Housing Discrimination Audit Report* (April 10, 2006), which summarized FHC's discrimination audit involving the

I. INTRODUCTION

Study Purpose

Despite the fact that evidence shows discrimination in housing, both rental and sales, on the basis of race, country of origin, and familial status, little research has been done on discrimination in the housing market on the basis of disability. Nevertheless, the U.S. Department of Housing and Urban Development found that, in 2005, while complaints of housing discrimination involving other protected categories declined, those involving discrimination on the basis of disability did not. Of 9,254 total complaints received by HUD and state and local housing agencies, 41 percent involved allegations of disability discrimination. Moreover, HUD estimates that the number of actual complaints received represents only a small fraction of actual incidents of discrimination in housing encountered by persons with disabilities.

Housing is more than merely a roof over a person's head. The ability to freely seek out and choose one's housing, in any community, without facing actual or perceived barriers, is crucial in allowing a person or family to achieve independence, economic self-sufficiency, social acceptance, and professional and educational opportunities. As early as 1923, the U.S. Supreme Court recognized that the right to "establish a home" has long been cherished as one of the fundamental liberties embraced by the Due Process Clause of the U.S. Constitution.² In 1973 and 1990 respectively, Congress passed the Rehabilitation Act and the Americans With Disabilities Act, expanding anti-discrimination protection to include individuals with disabilities. Furthermore, in 1988 the federal Fair Housing Act was amended to expand its coverage to include discrimination based on disability. Ultimately, in 1999 the Supreme Court recognized the importance of integration and community-based housing for individuals with disabilities in its landmark decision in *Olmstead v. L.C.*³ Thus, housing discrimination encountered by an individual with a disability threatens the critical strides made since 1973 because such discrimination results in geographic segregation, which is defined as the inability of persons with disabilities to live independently in the community of their choice.

protected classes of race, familial status, source of income and national origin.

² See *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

The community of individuals with disabilities is by far the largest minority group in the country,⁴ with members from all age levels, as well as race, ethnic, and economic backgrounds. Despite the size of this group, few Americans know or understand how severe and pervasive discrimination towards this population is. A 2002 study found that only about half of all Americans knew that a refusal to make reasonable accommodations for a person with a disability or to permit reasonable modifications in housing is illegal.⁵ With the general population of the U.S. aging in greater proportional numbers, the number of individuals requiring accommodations or modifications in housing will likewise continue to increase.⁶ Thus, it is in the best interest of municipalities to assess whether barriers to entry exist in their housing market for individuals with disabilities, and whether housing providers have the requisite knowledge of their legal obligations regarding housing discrimination. Based on such assessments, municipalities must, if necessary, take appropriate measures to eradicate obstacles and educate each group of stakeholders, including landlords, real estate agents, policy makers and people with disabilities.

Background

The Disability Law Center is a statewide private non-profit organization that is federally mandated to protect and advocate for the rights of individuals with disabilities. Since 1978 the Law Center has provided a full range of legal assistance to people with disabilities in Massachusetts, including legal representation, regulatory and legislative advocacy, and education and training for individuals with disabilities, housing providers, employers and service providers on the legal rights of people with disabilities.

³ 527 U.S. 581 (1999).

⁴ The 2000 U.S. Census found that there are more than 50 Million Americans with disabilities. See U.S. Census Bureau: *Disability Status: 2000*, (March 2003) at www.census.gov/prod/2003pubs/c2kbr-17.pdf. In Massachusetts, 11.3 percent of the population between the ages of 16 and 74 have a disability. See Center For Labor Market Studies, Northeastern University: *The Disabled Population in Massachusetts, Its Current Size, Demographic/Socioeconomic Characteristics, Employment and Poverty Status, and Projected Outlook*, (November 2006).

⁵ See M. Abravanel and M. Cunningham, *How Much Do We Know: Public Awareness of the Nation's Fair Housing Laws* (2002), Washington D.C.: U.S. Department of Housing and Urban Development.

⁶ The 2000 U.S. Census reported that almost 42% of adults aged 65 and older have one or more disabilities. See *id.* The Administration on Aging projects that by 2030 individuals aged 65 and older will make up approximately 20% of the total U.S. population. See *Administration on Aging, "Statistics: Aging into the 21st Century,"* (October 2003) at www.aoa.gov/prof/Statistics/future_growth/aging_21.asp.

Between May and November 2006, DLC conducted a fair housing audit in the city of Newton, Massachusetts. The goal of the Disability Discrimination Audit was to study Newton's housing market for discrimination against people with disabilities and provide the Newton Fair Housing Task Force and the Mayor's Committee For People With Disabilities with a summary of the audit's findings and recommendations on ensuring fair housing for all persons regardless of physical or mental impairment.

II. LEGAL FRAMEWORK

Individuals with disabilities are protected from housing discrimination in Massachusetts under both federal and state law. The Fair Housing Act of 1968 ("FHA"),⁷ Section 504 of the Rehabilitation Act of 1973, Title II of the Americans With Disabilities Act and chapter 151B of the Massachusetts General Laws together prohibit discrimination in virtually all forms of housing,⁸ whether privately or publicly administered, funded or subsidized. In addition, all parties associated with a property and/or real estate transaction must comply with fair housing laws. This includes landlords, sellers, real estate agents, real estate companies with whom agents are affiliated, brokers, and lenders.

Differential Treatment

It is unlawful under each of the above laws to withhold, deny, make unavailable, or refuse to rent, lease or sell a dwelling because of the disability of the tenant, prospective tenant, buyer or prospective buyer. Specific examples of unlawful discriminatory conduct include:

- Making untruthful representations that dwellings are unavailable;
- Making statements that discourage rentals or purchases;
- Refusing to negotiate for sale or rental;
- Steering individuals with disabilities to or away from certain neighborhoods, types of housing or specific dwellings;

⁷ The FHA was amended in 1988 to include disability as a protected category.

⁸ The FHA exempts owner-occupied buildings with four or fewer units. Chapter 151B exempts owner-occupied buildings with two or fewer units. Thus, a 3-family, owner-occupied building would be covered by chapter 151B but not by the FHA. A two-family building not occupied by the owner of the building

- Imposing different sales prices, rents or fees;
- Imposing different qualifications, conditions, application procedures, or screening and selection standards;
- Refusing to rent to a person because of their association with an individual with a disability, such as a family member;
- Providing different services to individuals with disabilities;
- Inquiring about the existence, nature or severity of a disability, unless occupancy of a particular unit is specifically tied to one's status as a person with a disability, as in certain publicly-funded housing programs; and
- Segregating individuals with disabilities to certain areas of buildings or of apartment complexes.

In other words, antidiscrimination statutes forbid "differential treatment" in terms, conditions and privileges of housing based on the disability of a buyer or renter, or based on the disability of a person who is associated with a buyer or renter, such as a family member.

Reasonable Accommodation

In addition, antidiscrimination statutes forbid refusals on the part of housing providers to remove unnecessary barriers to equal housing opportunities. One such barrier might be a rule, policy or practice of a housing provider. Discrimination under the fair housing laws includes "a refusal 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." See, 42 U.S.C. § 3604(f)(3)(B). The only requirement is that there be a causal connection between the individual's disability and the need for the accommodation. So long as the requested accommodation does not constitute an undue financial or administrative burden, or fundamentally alter the nature of the housing or service, the housing provider must provide the accommodation.

In general, it is a landlord's or real estate agent's obligation to bear the cost of an accommodation. Furthermore, a housing provider may not charge an extra fee or require

would be covered by both the FHA and chapter 151B.

an additional deposit as a condition of granting a reasonable accommodation.

Reasonable accommodations may be necessary at all stages of the housing process, including during a housing search, during the application process, during a tenancy, or to prevent eviction. If the requested accommodation is unreasonable, the housing provider may propose a substitute accommodation. In so doing, he or she should give primary consideration to the accommodation requested by the tenant. According to the Department of Justice ADA Technical Assistance Manual, II-7.1100:

It is important to consult with the individual to determine the most appropriate auxiliary aid or service, because the individual with a disability is most familiar with his or her disability and is in the best position to determine what type of aid or service will be effective.

Examples of reasonable accommodations include:

- Waiving no-pet rules for tenants who use assistance or support animals;
- Providing and paying for auxiliary aids for applicants and tenants with impaired sensory, manual or speaking skills where needed to facilitate effective communication; e.g. Braille or taped materials for individuals who are blind and sign language interpreters for individuals who are deaf;
- Assigning an accessible parking space close to the entrance to a building or unit for a tenant with a mobility impairment, regardless of whether parking spaces are generally available on a first come, first served basis;
- Allowing a tenant with a mental impairment who is afraid to leave his unit to mail his rent check instead of paying his rent in person;
- Providing assistance, or allowing an applicant to receive assistance from the person of her choice, in filling out a rental application form.

Physical Modifications to Existing Housing

A second such barrier to equal housing opportunities for individuals with disabilities may be physical or architectural in nature. Where such barriers exist, reasonable structural modifications must be made to allow persons with disabilities the full enjoyment of the housing and related facilities. See 42 U.S.C. § 3604(f)(3)(A). Examples of reasonable modifications include:

- Installing a ramp into a building where the entrance has five or fewer steps;

- Lowering the entry threshold of a unit;
- Installing grab bars in a bathroom;
- Installing raised numbers or a flashing-light doorbell;
- Lowering a cabinet.

The law requires that an owner not withhold permission to make such reasonable modifications. The cost of physical modifications are generally paid for by the tenant, *with the following exceptions under Massachusetts law*: public housing units, privately owned assisted housing and public or private multifamily and contiguously located housing of ten or more units.

Places of Public Accommodation

In addition to the non-discrimination, reasonable accommodation and reasonable modification protections afforded to people with disabilities under state and federal fair housing laws, places of public accommodation must also refrain from creating barriers to equal housing opportunities during the housing search process. Real estate offices and building management offices are examples of places of public accommodation because they are service establishments whose operations affect commerce. As places of public accommodation under Massachusetts law and Title III of the Americans with Disabilities Act, agents may not discriminate against an individual with a disability, must provide services in the most integrated setting possible and must make reasonable modifications in policies, practices and procedures to ensure equal access to individuals with disabilities.

A call or visit to a real estate agent is frequently the first step in the process of finding housing. Often, a discriminatory barrier encountered at this early stage, whether of a physical or attitudinal nature, or involving communication access, will discourage a person with a disability from continuing to seek housing through that agency, and may even dissuade the individual from seeking housing in a particular town or city altogether.

III. AUDIT METHODOLOGY

Testing Overview

Testing is an effective method of investigation used to study the existence and extent of housing discrimination in a chosen housing market by using testers who pose as prospective tenants or home buyers. The Disability Law Center's fair housing audit was designed and conducted using a group of "subject testers" from six different protected disability categories, each of whom was paired with a nondisabled "control tester." Paired tests were conducted to determine whether barriers to obtaining housing for persons with disabilities exist in the City of Newton in the form of differential treatment towards persons with disabilities (treating an individual with a disability less favorably than a similarly-situated home seeker without a disability). In addition, non-paired tests were conducted to investigate whether housing discrimination exists in the form of failure to permit reasonable modifications to ensure accessibility of housing units, or failure to make reasonable accommodations to ensure both full and equal participation in the housing search process and an equal ability to use and enjoy a dwelling. In such tests, it is not necessary to compare the experience of the tester with a disability with a non-disabled tester because differential treatment is not necessary to prove discrimination based on a failure to provide reasonable accommodation or reasonable modification. The act of denial itself is evidence of illegal discrimination.

Test subjects were chosen randomly based on advertised availability of housing. In determining whether or not real estate agencies, landlords or subsidized housing providers discriminate against persons with disabilities, DLC implemented a testing strategy with distinct tests for differential treatment, reasonable accommodations and reasonable modifications. Some individual tests combine elements of testing for differential treatment with testing for willingness to make reasonable accommodations or allow modifications. For example, a paired test to determine whether testers have been treated differently may also include a non-paired element in which the tester with a disability makes a request for reasonable accommodation or reasonable modification of a unit.

In testing for differential treatment, DLC matched each subject tester with a

disability with a non-disabled control tester, who was comparable to the subject tester in terms of demographic information and given a comparable profile with respect to income and housing needs. Following preliminary inquiries by the testing coordinator to ensure unit availability, each pair tested a housing provider, with the subject tester inquiring about housing early in the day, and the control tester following up with similar requests later the same day or on the following business day. Reasonable accommodation and reasonable modification tests involved either, 1) the subject tester contacting a housing provider regarding available units and inquiring as to the landlord's willingness to reasonably modify the unit, or make an accommodation regarding unit policies due to their specific needs resulting from their disability, or 2) the subject tester requesting an accommodation from a real estate agency in order to allow them to participate fully and equally in the housing search process.

Testers were trained to obtain and record information and provide feedback regarding disability-related inquiries or comments made, general information provided, references requested, deposits sought, readiness to accept applications or follow-up inquiries and willingness of test subjects to show available units and make reasonable accommodations and/or modifications. Each tester received a Test Assignment Form in advance of the scheduled test and completed a detailed Post-Test Questionnaire at the conclusion of the test. DLC testing coordinators provided necessary oversight, monitoring and support during the testing phase and collected and organized the data received according to defined treatment indicators.

It is important to note that the DLC Disabilities Discrimination Audit should not be considered "enforcement testing" – that is, testing specifically designed to obtain admissible evidence in support of litigation efforts. Tests have been conducted for research and recommendation purposes only.

Tester Characteristics

Testers were paired so that the tester with a disability, or subject tester, and the control tester (the tester who does not have a disability) are similar in demographic characteristics, such as gender, age and income, as well as in housing needs, such as unit size and desired rent. Testers were generally instructed to indicate that they wanted to

move to Newton due to its proximity to Boston and reputation as a desirable place to live.

It is most often the case that, given two candidates for an available unit, any credible realtor would want to recommend a landlord or owner rent to the more qualified candidate. Thus, the subject tester with a disability is often given a salary which is slightly higher than that of the control tester, and also a slightly better credit report than the control tester. In designing tests in such a way, evidence of discrimination revealed by the test is more reliable, because test coordinators are able to observe that the tester with a disability is treated as a less qualified candidate than the control tester even though the background assigned for their test appears to make him or her the more desirable tenant.

Testers were trained regarding the protections afforded to individuals with disabilities by federal and state housing discrimination laws. Testers were also trained concerning the testing process, reporting requirements and the importance of maintaining confidentiality and objectivity throughout the testing program. Significantly, testers were cautioned not to approach a test with preconceived notions or to draw any conclusions on their own regarding either the results of a completed test or the reasons why a particular test subject was chosen. At the conclusion of a test, testers were required to complete and submit a detailed questionnaire describing their experiences, and to conduct a post-test debriefing with the testing coordinator to ensure comprehensiveness and accuracy of test data.

For the Newton Housing Disability Discrimination Audit, subject testers were individuals with disabilities that included 1) an individual who is a wheelchair user; 2) an individual with mental illness; 3) an individual who is blind; 4) an individual who is deaf; 5) an individual who has a developmental disability; and 6) an individual with a mobility impairment.

IV. AUDIT RESULTS

Summary of Findings

DLC conducted its testing program between June and November 2006. A total of 52 tests were conducted. Some tests were strictly conducted to determine whether evidence of differential treatment was found; other tests included elements of both differential treatment and reasonable accommodation/modification.⁹ Each property or entity tested was covered under one or more of the applicable anti-discrimination laws discussed above. Each tester assignment, and the selection of properties and/or real estate agents tested during the audit, was random and dependent on unit availability at the time of test design. Over the course of the audit, testers conducted tests of private and subsidized rental properties and properties for sale in city of Newton.

The Disability Discrimination Audit revealed that individuals with disabilities encounter significant barriers to entry into the Newton housing market, especially the private, non-subsidized rental market.

- **Overall, evidence of discrimination was found in 25 of the 52 tests conducted, or 48%.**
- **Within the rental market (both private and subsidized), 44 tests were conducted, revealing evidence of discrimination in 20 (45%).**
- **Of 7 tests involving subsidized rental housing, no evidence of discrimination was found.**
- **Of 37 tests conducted involving private, non-subsidized rental housing, evidence of discrimination found in 54%.**
 - **Within private, non-subsidized rental housing, evidence of discrimination in the form of differential treatment was found in 67%.**
 - **Within private, non-subsidized rental housing, evidence of discrimination in the form of a failure to provide**

⁹ For example, in a paired test for differential treatment in rental housing, the subject tester would obtain data which would be compared to that obtained by the control tester. Additionally, in the same test, the subject tester would request a reasonable accommodation or a reasonable modification. In designing tests in this fashion, DLC was able to conduct a greater number of overall tests than if each accommodation or

reasonable accommodation was found in 36%.

- **Within private, non-subsidized rental housing, evidence of discrimination in the form of a failure to allow reasonable modification of a unit was found in 40%.**
- **Of 8 tests involving properties for sale in Newton, evidence of discrimination was found in 62.5%.**
 - **80% of sales tests for differential treatment revealed evidence of discrimination.**
 - **33% of sales tests for reasonable accommodation revealed evidence of discrimination.**

Two of the most significant forms of discrimination faced by individuals with disabilities in the Newton housing market are differential treatment (being treated less favorably and/or being provided inferior information or services than nondisabled individuals) and real estate offices which offer services that are not fully accessible.

The audit found evidence of discrimination in violation of federal and state fair housing laws in the form of unequal treatment compared to nondisabled individuals, lack of awareness on the part of housing providers regarding reasonable accommodations for home seekers with disabilities, and unwillingness to make reasonable modifications to a unit to ensure equal opportunity to use and enjoy a home. Differences in treatment were found at all stages of the housing search process, from initial calls placed to set up an appointment, through meetings and interactions with housing providers, to follow-up contacts with testers.

The audit also revealed significant barriers to entry due to potential violations of federal and state laws which protect individuals with disabilities from discrimination in places of public accommodation, such as real estate agencies. Examples of such violations include lack of physical access to offices combined with a failure to make a reasonable accommodation or modify a practice or procedure for an individual with a disability, as well as differential treatment of individuals with disabilities.

With respect to subsidized housing, the environment within Newton appears to be more welcoming towards individuals with disabilities. In each of the tests for differential

modification test had been conducted separately.

treatment, reasonable accommodation and reasonable modifications conducted, the subject tester and control tester were treated equally and provided similar information, and no evidence was found of an unwillingness to make accommodations or modifications. Not a single tester was informed that subsidized housing units were currently available, and some testers were told of wait lists of up to seven years for subsidized units. Finally, testing in housing sales revealed evidence of discrimination in the form of differential treatment at a rate comparable to that found in the rental market.

Representative samples of DLC's findings are discussed below.

Testing for Differential Treatment in Rental Housing

Overview

In paired tests for differential treatment, both the subject tester and control tester were instructed to inquire about similar units and collect data designed to reveal to the test coordinator whether differential treatment occurred or whether other forms of discrimination were encountered, such as discriminatory statements or violations of the public accommodation provisions of Title III of the ADA. Specifically, test results have been analyzed to determine whether:

- 1) Evidence was found of discrimination in violation of one or more fair housing laws (i.e. the subject tester was treated less favorably than the control tester);
- 2) No evidence was found of discrimination (i.e. the subject tester and control tester were treated equally);
- 3) Evidence was found of one or more barriers to entry into the Newton housing market for individuals with disabilities (i.e. evidence of discrimination in violation of laws other than fair housing laws, such as Title III of the ADA).

Paired tests were conducted in person and by phone of both private rental market and subsidized housing. No evidence of discrimination was found in tests conducted involving subsidized housing. However, tests conducted within the private rental market revealed evidence of discrimination in 67%.

Testing Outcome

Overall, 56 percent of the paired rental tests conducted revealed evidence of

discrimination. However, the private rental market in Newton showed significantly greater signs of differential treatment of individuals with disabilities than the subsidized housing market. In fact, none of the tests conducted involving subsidized rental units revealed evidence of discrimination in the form of differential treatment. Of the private market rental tests conducted, 67 percent revealed evidence of discrimination.

Evidence of Discrimination - Examples

Untruthful representations/false statements

This type of discrimination can include untruthful representations that apartments are unavailable; failure to show available apartments to the subject tester that are shown to the control tester; or refusing to negotiate for rental.

Test B 1 - The subject tester was informed of and shown one unit in the stated price range, whereas the control tester, after indicating a desire to view similarly priced and sized apartments, was informed of and shown three units.

Test M 1 - Although preliminary research by the testing coordinator confirmed that suitable units were available within the desired price range, the subject tester was not told of or offered a viewing of any units. The control tester was shown three units. Additionally, after he inquired specifically about first floor units, the subject tester was told that the agent would get back to him "if first floor units were available." No follow-up occurred with the tester. However, the control tester was shown one available first floor unit, confirming that such a unit was available at the time.

Test D 1 - Despite multiple requests over a span of four days to view a specific apartment which was confirmed by the test coordinator to be available, the subject tester was not shown any available units. During this time period, the control tester was provided extensive information about the unit by the landlord.

Test D 4 - The control tester was shown an available unit which the subject tester was not shown. The subject tester had contacted the real estate agent through the relay service,¹⁰ so the agent was on notice that he was a person with a disability. Since he was treated less favorably than the control tester by not being shown an available unit, the test

¹⁰ The relay service is a type of telephone-based communication system that allows individuals who are deaf or hard-of-hearing to converse in sign language through a computer, using video technology, with a person who is using a standard phone.

reveals evidence of differential treatment.

Test WC 3 - The control tester was shown an accessible, first floor unit. The subject tester, after stating a need for a first floor unit, was not told of the unit's availability until over a week after her initial visit to the real estate agency (and a week after the control tester had viewed the same apartment). After expressing a desire to view the apartment, the agent called the landlord to make sure it was still available and then informed the tester that it had in fact already been rented.

Test DD 6 - The control tester was provided information about an apartment which met the criteria which had been established for the test and was told that the landlord would be willing to decrease the rent since only one person would be living in the unit. The subject tester was also asked whether he would be living alone, but then was told by the agent that he did not know if there were any units available that met his criteria. The agent offered to call the tester back if something came up, but did not contact him again. Thus, the subject tester was not offered the same rent reduction.

Steering

Test B 4 - The subject tester was shown two units in Brighton (the realty office was located in Newton), whereas the control tester was shown the same two Brighton units, but also one additional unit in Newton which was in the same price range. The control tester was also offered a second appointment later in the week, during which he was shown a second Newton apartment.

Test M 1 - Both testers indicated that they were seeking apartments in Newton. The subject tester was encouraged by the real estate agent to seek apartments in Waltham and Watertown. The control tester was not similarly steered toward those towns.

Test WC 8 - During this phone test, the subject tester informed the agent that she was a wheelchair user and may need to make modifications to the interior of a unit. She made clear her intention to find an apartment in Newton. The agent indicated that he did not have many apartments in Newton, but had many in Allston and Brighton. The tester asked him to take her information and contact her if anything in Newton came up. The control tester later confirmed by phone that apartments were available which met the

criteria established for the test.

Imposing different terms/conditions or qualifications

This type of discrimination can include different information given to the tester regarding rent, fees, qualifications, application procedures, or screening standards; or asking for more/different information, which can discourage rental.

Test B 1 - The subject tester was told that a credit check would be required; the control tester was not told that a credit check was required.

Test B 2 - The subject tester was told the rent would be \$1600 and a fee was required. The paired control tester was offered a rent reduction to \$1550 and was told "you can ask the landlord to pay" the fee.

Test B 4 - The subject tester was told that a fee would be charged; the control tester was told that the landlord "usually pays the fee." In addition, whereas the subject tester, after being shown available units, had to inquire as to what the application process entailed, the control tester was offered an application and actively encouraged to apply. Finally, in contrast to the subject tester, the control tester received follow-up information from the agent and an offer of a price reduction on one of the units he had viewed.

Test MI 3 - The control tester was told that as long as he had a job and good credit, his application would be accepted. He was not asked any questions about his employment. The subject tester, after stating his income, was asked where he worked and told that he would need "perfect" credit to qualify.

Test MI 4 - The subject tester was informed that he would not be shown any apartments unless he signed an application form which indicated that a fee equivalent to one month's rent would be paid by him if he rented an apartment through the agency. All testers were trained by DLC not to sign any application forms, so he terminated the test at that point. The control tester was shown two apartments, by appointment, without being told that he would need to complete the application form. He was also informed by the agent that the fee, if he found an apartment, would be one-half month's rent, with the landlord paying the other half.

Test D 5 - The subject tester was informed by the agent that he would need to pay an application processing fee, whereas the control tester was not.

Test M 1 - The subject tester was not told what the application process entailed, whereas the control tester was, without asking, provided a detailed description of the application process.

Providing different services

Treating an individual with a disability differently than a nondisabled individual in the manner of services provided, or by refusing services altogether, can be a violation of fair housing laws and Title III of the ADA if the entity is a place of public accommodation, such as a real estate office.

Test M 5 - The subject tester was refused service outright. (See Reasonable Accommodation Test M6, below). The control tester was shown four available units, offered a follow-up appointment to view other units, and was encouraged to begin the application process due to the rapid turnover of apartments for September 1 occupancy.

Test D 1 - After initial investigation by the testing coordinator that an appropriate unit was available, the subject tester contacted the landlord through the relay service and left a voicemail message, asking to be contacted through the relay service. Two more similar calls were placed, and the tester's messages were never returned. During this time period, the control tester contacted the landlord regarding the same unit and was provided extensive information about the unit.

Test D 4 - The subject tester contacted a real estate agent through the relay service regarding a unit which was listed as available on the agency's website. He left a voicemail message, again asking to be contacted through the relay service. After leaving a second similar message, the tester was not contacted. This amounts to a denial of service by a place of public accommodation.

Test WC 5 - The control tester was able to set up an appointment to view apartments without any difficulty. On the other hand, the subject tester, after informing the real estate agent that she was a wheelchair user in their initial conversation, did not hear back from the agent despite his promise to call her back after searching for an accessible unit. The subject tester left two subsequent voicemail messages requesting a return call but was not contacted.

Other/Title III violations

This type of discrimination can include disclosing to others that the tester is a person with a disability; assumptions/comments about people with disabilities; or imposing barriers to equal participation in the housing search process in violation of Title III of the ADA.

Test WC 3 - The real estate agent called the landlord to set up a viewing and said that the person who wanted to see the apartment was "a professional woman who uses a wheelchair." By revealing to the landlord that the tester was a person with a disability, the agent contributed to the false stereotype that individuals with disabilities are "different" and thus can be treated that way.

Test M 1 - The subject tester was asked many direct questions about his disability that made him feel "uncomfortable" (such as what specifically his disability is and how he is able to accomplish everyday tasks). He was also asked many questions that the control tester was not asked (such as familial status and reason for wanting to move). Agents of landlords cannot make unnecessary inquiries into a person's medical condition or ask questions designed to reveal whether or not a person has a disability.

Test MI 3 - After the subject tester explained to the agent his desired criteria for an apartment, including rent of up to \$1300 for a one-bedroom apartment, the agent inquired as to whether he had a rent subsidy. The control tester, using the same income profile and desired criteria, was not asked the same question.

Test MI 4 - The agent spoke very highly of Newton during her meeting with the control tester, indicating that she lived there, that it was an easy commute into Boston, that it was the 4th safest city in the U.S. and that there were many fine restaurants, stores, etc. The subject tester was not "sold" on the virtues of living in Newton by the same agent. Such fact can be evidence of discrimination because the tester with a disability was treated less favorably than the tester without a disability.

Test DD 3 - In this paired phone test, the subject tester, who has a speech impairment, was told by an agent that he was not sure whether there were any apartments that met the tester's criteria. The agent took the testers name and number and said that he would contact him; however, the agent never did. The control tester spoke to an agent at the same location and was told over the phone of numerous listings which met his

criteria. The agent also followed up the conversation with an e-mail containing information about available units, and a week later e-mailed the tester again to see if he was interested in any of the apartments.

Testing For Reasonable Accommodation

Overview

Generally, the process involving reasonable accommodations in housing is initiated by the individual with a disability making a request, either verbally or in writing. The real estate agent or landlord should allow the accommodation if it is reasonable and will not result in a fundamental alteration of the service being provided or impose an undue financial and administrative burden.

In DLC's tests for reasonable accommodation, the tester with a disability was instructed to request an accommodation, either to allow him/her to participate fully and equally in the housing search process or to allow them to have an equal opportunity to use and enjoy a particular dwelling. The testers collected data designed to reveal to the test coordinator whether evidence of discrimination was revealed by either an agent's or a potential landlord's unwillingness to provide a reasonable accommodation.

Testing Outcome

A total of 13 tests for reasonable accommodation were conducted. Overall, 31 percent of the tests conducted revealed evidence of discrimination.

Testing for Reasonable Accommodation - Sample Findings

Reasonable Accommodation Request: Waiver of no pet policy

In rental properties where no pet policies are in place, such rules must be waived for a tenant with a disability who uses an assistive animal to support or provide services to him or her. The Department of Housing and Urban Development (HUD) and several courts have explicitly stated that an exception to a "no pets" policy would qualify as a reasonable accommodation.

Service animals include guide dogs that assist individuals who are blind, signal dogs that alert individuals who are deaf to nearby sounds, assistance animals that fetch

items for an individual who is a wheelchair user, or animals that provide emotional support for individuals with psychiatric disabilities. There is no restriction on the type of animal which may qualify as a service animal under the law. The tenant need only show that there is a link between his or her ability to function and the assistance or support provided by the animal. Landlords may impose reasonable rules regarding the behavior of service animals, but may not refuse to waive a no pets policy or impose additional fees as a condition thereof.

Overall, 33 percent of reasonable accommodations tests involving a request for waiver of a no pet policy revealed evidence of discrimination:

Test B 3 - The tester who is blind conducted a reasonable accommodation test involving a unit for rent in an owner-occupied three family home. The property in question was subject to Massachusetts law but not the federal Fair Housing Act, which exempts owner-occupied buildings of four or fewer units. During this test the agent asked the tester if he had pets. The tester responded no, but stated that he did have a guide dog due to the fact that he is blind. The agent then stated that the owner lived below the unit and the dog would "drive her crazy." The tester inquired about waiving the no pet policy and the agent said he could ask but the tester should probably look elsewhere. The agent informed the tester that he should avoid owner occupied buildings due to his guide dog and should look outside the Newton area, closer to public transportation in such communities as Brookline.

Test MI 1 - The tester, an individual with a mental illness, contacted a real estate agent by phone regarding a rental unit which the testing coordinator had confirmed was available and had a no pet policy. The tester requested waiver of the no pet policy for an emotional support animal (a cat). The agent informed the tester that he would check with the landlord. The tester then followed up with three phone calls to the agent. Finally, the agent called him back and stated that the landlord would not waive the no pet policy.

In four other reasonable accommodation tests, a willingness to waive a no pet policy for a guide dog or service animal was expressed by the housing provider.

Reasonable Accommodation Request: Housing search process

Both federal and state law require places of public accommodation to allow equal

access to their goods and services for people with disabilities. Denying a person with a disability the right to participate in or benefit from a place of public accommodation is illegal. Allowing equal access also includes modifying policies, practices and procedures as an accommodation, unless such modification would fundamentally alter the nature of the good or service provided. Real estate agencies are considered places of public accommodation, and thus the services they provide must be accessible to individuals with disabilities.

Barriers to equal access to places of public accommodation generally come in two forms: architectural and communications. Architectural barriers in existing buildings must be removed where removal is readily achievable (easily accomplishable and able to be carried out without much difficulty or expense). When removal of physical barriers is not readily achievable, places of public accommodation must use alternative methods to make their goods or services available, such as relocating a service to an accessible location or providing curb service. Barriers to effective communication may be removed by a place of public accommodation by the provision of auxiliary aids and services, such as qualified American Sign Language (ASL) interpreters and Braille materials. The cost of such aids and services *may not* be passed on to the customer with a disability.

Overall, 33 percent of tests involving requests for reasonable accommodation during the housing search process revealed evidence of discrimination.

Test M 4 - The tester contacted a housing provider by phone and self-identified as a person with a disability.¹¹ He was told that the agent who handles Newton would get back to him. Receiving no response, the tester made three follow-up phone calls. First, he was told the agent's name, but that he was out of the office. In the second follow-up call, he was told that there was no agent by that name in the office and that the realtor did not have any Newton listings. In the third follow-up call, after stating that he had researched the agent's website and found available units listed in Newton, the person who answered the phone simply hung up.

Test M 6 - The tester visited a real estate agent whose office was inaccessible due to stairs. The tester's companion went into the office and requested that an agent meet

¹¹ The tester was instructed to state that he would need an accommodation for his mobility impairment of meeting in an accessible location and would likely require modifications to the unit in the form of bathroom grab bars.

with the tester in an accessible location. The agent "looked blankly" at her and did not respond. She then left the office.

In two other tests involving a tester who is a wheelchair user, the test coordinator first confirmed that the real estate office was not wheelchair accessible. The tester contacted the agencies by phone and the agents, upon request, met her in an accessible location as a reasonable accommodation.

Two reasonable accommodation tests were conducted by an individual who is deaf. The tester contacted the housing providers via relay and was able to communicate all the necessary information to the agents. The tester then informed the agents that an ASL interpreter would be necessary for an in-person appointment to view available units. In each test an ASL interpreter was provided.

Reasonable Accommodation Request: Application and screening process

Landlords must make changes to application and screening policies as a reasonable accommodation for individuals with disabilities. Such accommodations may include assisting a person with a vision impairment to complete a written application; waiving an in-person application requirement for an individual with a mobility impairment; or modifying a tenant screening process and/or eligibility criteria for an applicant whose prior rental history was negatively impacted because of behavior or characteristics related to a disability, but who has since received treatment intended to address such affects of the disability. For instance, a tenant with mental illness who has been evicted from a previous apartment due to behavior which was a manifestation of their disability must be given the opportunity to show that he or she has subsequently received treatment and no longer poses a risk of engaging in similar behavior.

In a reasonable accommodation test conducted by a tester with a developmental disability, the tester was instructed to request a waiver of the screening requirement involving a reference from the applicant's prior landlord because he had most recently been living in a community residence or "group home." In such instances, landlords must accept alternate forms of personal references, such as from an employer or service provider, as a reasonable accommodation. In the test, the landlord indicated a willingness to provide the accommodation.

Testing For Reasonable Modifications

Overview

Permission to make reasonable physical modifications to a dwelling, at the expense of the tenant or prospective tenant,¹² cannot be denied. A housing provider may request reasonable assurances that any work performed will be done in a professional manner. In addition, a landlord may require the unit be restored to its original unmodified state, unless the structural change made would not interfere with a subsequent tenant's use and enjoyment of the premises.

In DLC's tests for reasonable modifications, the tester with a disability was instructed to request a physical modification to a rental unit, to allow him or her to have an equal opportunity to use and enjoy a particular dwelling. The testers collected data designed to reveal to the test coordinator whether evidence of discrimination was revealed by a potential landlord's unwillingness to allow a reasonable modification.

Of six tests for reasonable modifications conducted, 33 percent revealed evidence of discrimination. One test did not expose direct evidence of discrimination, but did reveal the fact that some housing providers do not know what the law requires with respect to which party must pay for modifications to be made to a unit in order to ensure accessibility.

Testing for Reasonable Modifications - Sample Findings

Test WC 1 - The tester, a wheelchair user, indicated to an agent that she was interested in an available apartment but would need to make modifications in the form of lowering cabinets. The agent indicated he would check with the landlord regarding her request and follow up with her, but never got back to her.

Test WC 8 - The tester inquired about a first floor unit which had three steps to the door. The agent checked with the landlord upon her request, and a willingness to allow her to install a temporary ramp at her own expense was expressed.

Test D 3 - The tester attended an appointment with a housing provider and,

¹² In Massachusetts, public housing providers, and owners of assisted housing and multifamily housing of

through an ASL interpreter, inquired of the building manager whether a visual fire alarm, smoke detector and doorbell could be installed if he were to take the unit. The manager replied that it would not be a problem.

Test D 6 - The tester, who is deaf, viewed a unit in a building of multifamily consisting of more than 10 units. Because of the size of the building, any reasonable modification would have needed to be made at the owner's expense. The tester requested the installation of a visual fire alarm, smoke detector and doorbell. The landlord expressed a willingness to do so, but only at the expense of the tester.

Test M 10 - In this test, the tester requested reasonable modification of the unit in the form of grab bar installation in the bathroom. The agent checked in with the landlord, who indicated that such a modification would be allowed, but did not know which party was responsible to pay the costs associated therewith. Note: given the nature of the property, the tenant would have been required to make the modification at his own expense.

Test M 11 - A subsidized housing provider expressed a willingness to make modifications to a unit and acknowledged that they would be responsible for bearing the costs thereof.

Testing for Evidence of Discrimination in the Sales Market

Overview

In tests regarding properties for sale in Newton, the testers were instructed to contact real estate agents about properties listed for sale on either a website or in a newspaper. A profile was created for each tester which would have made them appear financially qualified to purchase a condominium in the \$350-500,000 price range. Testers were instructed to indicate that they were just beginning their housing search and to inquire about a specific unit which the test coordinator had confirmed was available, as well as any other similar units which the agent put forward. Testers then collected data designed to reveal whether differential treatment occurred or whether other forms of discrimination were encountered, such as discriminatory statements or failure to provide reasonable accommodations during the search process.

ten or more units, must pay the cost of physical modifications.

Specifically, test results have been analyzed to determine whether:

1) Evidence was found of discrimination in violation of one or more fair housing laws (i.e. the subject tester was treated less favorably than the control tester);

2) No evidence was found of discrimination (i.e. the subject tester and control tester were treated equally);

3) Evidence was found of one or more barriers to entry into the Newton property sales market for individuals with disabilities (i.e. evidence of discrimination in violation of laws other than fair housing laws, such as Title III of the ADA).

Testing Outcome

DLC conducted eight tests involving the real estate sales market in Newton. Overall, 62.5 percent of the rental tests conducted revealed evidence of discrimination. 80 percent of paired tests revealed evidence of discrimination in the form of differential treatment between the subject and control tester, and 33 percent of tests for reasonable accommodation revealed evidence of discrimination.

Evidence of Discrimination - Examples

Differential Treatment

Test B8 - In this test, both the control tester and the subject tester were taken on a tour of the unit which they had been instructed to inquire about. However, after each tester indicated to the agent that they were interested in any other units that fell within their price range, the control tester was shown a second unit, whereas the subject tester was provided with access to a website which listed units for sale and told that if he was interested in any of them he should contact the agent again. The second unit which the control tester was shown did appear on that list of units, which the subject tester accessed as soon as he returned home.

Test D8 - The subject tester was informed by e-mail that he would need to present a mortgage pre-approval letter before he would be shown any properties. The control tester was shown a property on his first visit to the agent. On a follow-up visit, after the agent had sent him information about other properties for sale, he was asked if he had a pre-approval letter. He indicated that he did not, but even then was shown 5 additional

properties. Note: in this test the subject tester was offered the reasonable accommodation of an ASL interpreter. However, since he did not have a pre-approval letter he did not actually view any properties.

Test WC7 - The subject and control tester were shown the unit for sale on the same day. The agent told the control tester that the seller was offering a \$1,500 credit toward the closing costs. The subject tester was not provided with this information.

Test MI 7 - In this test, the subject tester was told that he would not be able to view any of the available properties until he met with a mortgage broker and received a pre-approval. This same prerequisite was not imposed on the control tester, who was also provided with a detailed description of how to access MLS listings on his own.

Title III (Places of Public Accommodation) Violations

Test M7 - Both the subject tester and control tester were provided information about available units. However, upon his first visit to the agent, which was located on the second floor, the subject tester was refused service after his companion went to the office to ask whether a sales associate would come downstairs to speak with the tester. The tester was later provided information regarding available properties by e-mail after he phoned the agency.

VI. RECOMMENDATIONS

Newton, by virtue of its proximity to Boston, safety, exceptional public schools and high standard of living, is understandably a highly sought-after destination for many home seekers. In addition, opportunities for individuals with disabilities to live independently in the community and to fully and equally participate in the economic and social life of Massachusetts have increased dramatically in recent years, in part due to political and legal victories, and in part due to an increased awareness of barriers to full integration and of the issues that face the community of people with disabilities. However, as the Newton Disability Discrimination Audit confirms, much work needs to be done if those opportunities will translate into tangible benefits for current or prospective residents of Newton. In short, the results of the audit should cause serious concern for all residents and policy makers of the City.

Newton should be commended for commissioning this audit, but must not allow its findings to be disregarded. The problem simply will not go away on its own. The city needs to be proactive in taking steps to ensure that discrimination in housing against people with disabilities is eliminated.

Specifically,

- 1) The Fair Housing Task Force and the Mayor's Committee For People With Disabilities must ensure that this issue remains in the forefront and continue to advocate for the rights of individuals with disabilities to seek and secure housing in Newton without facing discriminatory barriers.
- 2) The City should provide comprehensive training, outreach and education regarding fair housing laws to:
 - real estate agents
 - landlords
 - subsidized housing providers

Such trainings should include components on discrimination in the form of differential treatment and in the form of failure to provide reasonable accommodations and reasonable modifications.

- 3) The City should provide comprehensive training, outreach and education to real estate agents on laws regarding legal obligations of places of public accommodation, including components on discrimination and on physical accessibility.
- 4) The City should take steps to increase awareness among the public of issues faced by people with disabilities, including ways in which attitudinal barriers to full integration into the community may be eliminated.
- 5) The City should provide training, outreach and education regarding fair housing laws to people with disabilities in Newton and surrounding communities to ensure full awareness of one's right to be free from discrimination and awareness of remedies provided under the law where discrimination has occurred.
- 6) Real estate agents should gain knowledge of where accessible housing units are located. The City may consider completion of a comprehensive survey and creation of a searchable database of accessible units in Newton. An online database of available accessible housing units, coordinated by Citizens' Housing and Planning Association (CHAPA) is also available to anyone free of charge, and should be widely publicized by the City. The database is called "Mass Access" (the full name is the Mass Access Housing Registry).¹³ All owners, managers and housing authorities with accessible apartments are required to register the units with Mass Access.

¹³ It is located at <http://www.mnip-net.org/registry/registrymax.nsf/webpages/home?open>.

- 7) The City should consider requiring developers, during the permitting process, to confirm that where new or rehabilitated housing units are planned which are accessible the developer has in fact registered the units with Mass Access.
- 7) The City should provide necessary resources for real estate agents and landlords so that they have immediate access to information regarding understanding their legal obligations. Such resources should include sample anti-discrimination policies for free download, and posters to display in rental and sales offices.
- 8) The City should consider completion of an audit of new construction to ensure compliance with accessibility obligations of the law. Both state and federal law impose varying obligations on developers to design and construct housing units so that they can be fully used and enjoyed by persons with disabilities. Depending on the overall size of the project, Section 504 of the Rehabilitation Act, Title VIII of the federal Fair Housing Act, Chapter 151B of the Massachusetts General Laws and design standards promulgated by the Massachusetts Architectural Access Board may be triggered, and certain units within a building, or a certain percentage of units would be required to meet specific accessibility standards.

Submitted to the Newton Fair Housing Task Force and the Mayor's Committee For People With Disabilities,

By,

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Appendix C

FAIR HOUSING TASK FORCE

Newton Housing & Community Development Program
Newton City Hall, 1000 Commonwealth Avenue, Newton, MA 02459.
Phone 617-796-1120. TDD/TTY 617-796-7089

Guidelines for Uniform Local Resident Selection Preferences in Affordable Housing

The Newton Fair Housing Task Force recommends the adoption of the following uniform policies for the use of selection preferences for that affordable housing which is subject to the oversight of the City of Newton, either through funding or by regulation. The Uniform Guidelines are intended for use in affordable rental and homeownership programs, at initial distribution of the units and upon turnover or resale. Local resident selection preference policies should be as uniform as program constraints will allow across Newton's programs that distribute funding or regulate affordable housing, including but not limited to: Community Development Block Grant Program, HOME Program, Community Preservation Act Program, Inclusionary Zoning Ordinance, and Chapter 40B.

1. Non-Discrimination.

The use of the local selection preference shall not have the purpose or effect of delaying, denying, or excluding participation in a housing program based on race, color, religion, national origin, gender, age, disability, ancestry, marital status, family status, veteran or military status, sexual orientation, genetic characteristics, or status as a person who is a recipient of federal, state, or local public assistance, or the requirements of such programs.

2. Requirements of Other Programs.

Many programs, such as low-income housing tax credits, the approval procedures in effect under the Comprehensive Permit Guidelines (the 40B Guidelines), the HOME program, and others permit local resident selection preferences subject to program-specific limitations. These recommendations are to apply only where not in conflict with other applicable state or federal program requirements, or with fair housing or civil rights requirements.

3. Criteria for Local Preference.

A local preference should be given to otherwise qualified applicants who fall within any of the following equally weighted categories:

(a) Individuals or families who live in Newton.

(b) Households with a family member who works in Newton, has been hired to work in Newton, or has a bona fide offer of employment in Newton.

(c) Households with a family member who attends a public school in Newton.

First preference for dwelling units that are designed or modified to be accessible to people with disabilities should be assigned in the following order of priority: (a) first to households having preference under one or more of the three categories listed above that include a family member needing the features of the unit; (b) then to households without a preference that include a family member needing the features of the unit; (c) then to other households based on the preferences described above; and (d) then to other applicants.

4. Numerical Limitations.

The local preference may be used for up to 70% of the affordable dwelling units to be distributed, or such lower share as may be required by other applicable authorities.

5. Mitigating Potential Discriminatory Outcomes.

When the local preference is utilized, the developer or owner should use the procedures required by the 40B Guidelines in effect as of July 30, 2008. Under the 40B Guidelines, the owner or developer uses a lottery to select applicants from two pools: (1) a pool of applicants with preferences and (2) a pool of applicants without preferences. Any discriminatory effects are mitigated by adding minority applicants without preferences to the local preference pool until the percentage of racial and ethnic minorities in the local preference pool reflects the corresponding percentages in the Boston metropolitan statistical area.¹ Additional mitigation may be required to assure that a preference for households that work in the community does not discriminate against or have the effect of excluding disabled and elderly households in violation of fair housing laws.

6. Affirmative Fair Housing Marketing.

¹ The procedures are described in detail in Chapter III of the “Guidelines for G.L. c.40B Comprehensive Permit Projects and the Subsidized Housing Inventory” in effect as of July 30, 2008. A copy of the 40B Guidelines is available at: <http://www.mass.gov/dhcd/Temp/06/40Bgdlines.doc>

When the local preference is used, the developer or owner should engage in affirmative fair housing marketing. Marketing should be based on the procedures such as those established under the 40B Guidelines. Marketing should meet the following minimum standards:

(a) Outreach. Marketing should reach out to those groups protected by fair housing laws. Marketing should be conducted in the print, radio and other media serving families with children, people with disabilities, and those racial and ethnic groups in the Boston metropolitan area not represented in comparable numbers in Newton. At minimum, available units should be listed with the MetroList administered by the Boston Fair Housing Commission.

(b) MassAccess. Units modified or designed as accessible units for people with disabilities should be registered with the MassAccess Registry.

(c) Application Procedures. The owner or developer should use fair methods for accepting applications, such as accepting applications over a period of weeks, accepting applications by mail, and use of lotteries to establish waiting lists.

(d) Selection Preferences. Local residency preferences must not be advertised as they may discourage non-local potential applicants.

Appendix D

CIVIL RIGHTS PROGRAM ACCESS CHECKLIST

FOR

NEWTON HOUSING OFFICE PROGRAMS

A. Design

1. Are the offices, meeting rooms, community rooms, and other spaces used by the public in connection with the program or activity accessible to people with disabilities? Yes No .
2. Are accessible dwelling units available? Yes No . Total number of accessible units: 84. Percent of total units 5.6%.

Does the program or activity maintain policies for construction of accessible dwelling units, offices, meeting rooms, community rooms, and other spaces used by the public, applicants, or program participants? Yes No .
Describe the policies, including the architectural design standards used in the program. Policy applies to construction of accessible dwelling units only.

3. Does the program or activity maintain policies for modification of existing dwelling units, offices, meeting rooms, community rooms, and other spaces used by the public, applicants, or program participants in order to accommodate individuals with disabilities? Yes No .

Describe: Funds loan program for low-moderate income homeowners with grants for arch barrier removal activities.

B. Marketing, Outreach and Waiting Lists

1. Does the program or activity have a marketing program that targets groups of qualified applicants who might not apply because of race, national origin, age, disability, because they are not local residents, or because of other factors? Yes No .

Describe: attached is the City's marketing policy and the Task Force's local preference policy that, once adopted, the City will follow.

2. Does the program or activity display the HUD-approved fair housing poster in its management offices, and use the HUD-approved fair housing statement and fair housing insignia on its marketing material? Yes No .

Describe: A HUD approved fair housing poster is on display in the Housing Office. The equal opportunity logo is used during the marketing of the FTHB and Newton Connection programs in accordance with the City's marketing policy.

3. Are accessible dwelling units registered with MassAccess? Yes ____ No .
4. Does the program or activity use methods that assure that all qualified applicants have an equal opportunity to apply (such as accepting applications over a period of weeks and by mail, and use of lotteries to create waiting lists)? Yes No ____.

Describe: See attached example from a recent lottery for FTHB unit (resale).

5. Does the program or activity use methods to assure that qualified applicants with limited English-speaking ability have an equal opportunity to apply (such as translated written materials, and translators)? Yes No ____.

Describe: Attached is the City's language assistance plan. Marketing information on the City's homebuyer assistance programs are translated into Spanish and Chinese. Application and guidelines are not presently translated.

6. Does the program or activity use auxiliary means of communicating with people with disabilities (such as TTY devices, sign language interpreters, and written materials in large print and electronic formats)? Yes No ____.

Describe: interpreters and materials will be provided upon request. See Language Assistance Plan.

7. Does the program or activity keep separate records to keep track of the racial and ethnic origin, age, and disability of applicants and participants? Yes No . Only racial and ethnic origin data is collected for HUD IDIS reporting.

C. Occupancy Policies

1. Does the program or activity maintain written policies governing applications, screening, admission, and occupancy? Yes ____ No ____ Not applicable .
2. Is there a statement of fair housing and civil rights compliance in the application, screening, admission and occupancy policies? Yes No ____

Housing Development's loan agreement requires:

Equal Opportunity

The Subgrantee shall comply with all applicable federal and state laws governing discrimination and equal opportunity. In particular, the Subgrantee shall ensure compliance with CDBG Program regulation 24 CFR 570.601 and .602 and the following statutes and executive orders pertaining to Equal Opportunity: Fair Housing Act; Executive Order 11063 (Equal Opportunity in Housing); Civil Rights Act of 1964, Title VI (Nondiscrimination in Federally Assisted Programs); Age Discrimination Act of 1975; Rehabilitation Act of 1973, Section 504; Exec. Order

11246 (Equal Employment Opportunity); Housing and Urban Development Act of 1968, Section 3; Exec. Orders 11625 and 12432 (Minority Business Enterprise); Exec. Order 12138 (Women's Business Enterprise).

Fair Housing

General. The Subgrantee shall affirmatively further fair housing consistent with the City of Newton's Consolidated Strategy and Plan and with 24 CFR 570.601.

Affirmative Marketing. The Subgrantee shall adopt and implement affirmative marketing procedures for the Property consistent with the requirements of the Newton Community Development Block Grant Program and WestMetro HOME Consortium Affirmative Marketing Plan. The Subgrantee shall summarize these procedures in an Affirmative Marketing Plan, subject to review and approval by the NCDA. The Plan shall be submitted to the NCDA for review and approval within one month of the date of this Agreement.

3. Does the program or activity maintain occupancy policies that maximize the use of dwelling units for families with children, including large families with children?

Yes No . Describe: Homebuyer program requires maximizing use of 2+ bedroom units for families.

4. Does the program or activity maintain a written reasonable accommodation policy under which a person with disabilities may request a reasonable modification of a policy, procedure, or administrative practice? Yes No .

Describe: Applicant can request a waiver of program guidelines.

D. Fair Housing Counseling

1. Does the program or activity maintain policies under which an applicant or participant can appeal an adverse decision about program participation? Yes No .

Describe: applicant can request a waiver of program guidelines. Applicant can also file a complaint with HUD, the Human Right's Commission, MCAD, or the Fair Housing Center of Greater Boston.

2. Is there a civil rights coordinator designated by the program or activity to address fair housing and civil rights issues? Yes No .

Provide contact information for the coordinator and describe the coordinator's duties: Bev Droz is the designated ADA/Section 504 Coordinator. See attached.

3. Does the program or activity provide referral and counseling to program participants and applicants about fair housing and civil rights concerns? Yes No .

Describe: See Rules of Procedure for Complaints of Unlawful Practices, City of Newton Fair Housing Intake Form, and Fair Housing Discrimination Report Line – Flowchart of Process.

E. Fair Housing Planning

1. Has the program or activity developed a fair housing plan such as a written analysis of impediments to fair housing choice, Section 504 self-evaluation of policies and procedures, architectural access transition plan, Language Assistance Plan for people with limited ability to speak English, or similar written analysis to examine civil rights access to the program or activity? Yes No .
Attach copies.

2. Does the fair housing plan for the program or activity identify specific barriers to civil rights access, and include a plan for addressing identified barriers? Yes No .

Describe: The City has an Analysis of Impediments to Fair Housing Choice and the Fair Housing Task Force is currently developing a Fair Housing Action Plan.

3. Does the program or activity maintain records that show that the plan for addressing fair housing barriers is carried out? Yes No .

Describe: Actions for addressing fair housing barriers is reported to HUD annually in the CAPER.

4. Does the program or activity maintain policies to update any such fair housing plans no less than every 5 years? Yes No .
5. Does the program or activity maintain and carry out policies to monitor compliance with fair housing and civil rights requirements? Yes No .

Describe:

Appendix E

Resources

City of Newton Consolidated Plan FY2006-2010:

<http://www.ci.newton.ma.us/Planning/Con%20Plan%20Master.pdf>

City of Newton FY07 Consolidated Annual Performance and Evaluation Report:

http://www.ci.newton.ma.us/Planning/fy07_AnnualPerformanceEvalpdf.pdf

City of Newton FY07 Annual Action Plan:

http://www.ci.newton.ma.us/Planning/_FY07_action_plan.pdf

City of Newton Analysis of Impediments to Fair Housing Choice:

<http://www.ci.newton.ma.us/housingdevelopment/Fair%20Housing%20Plan%20FINAL.pdf>

Jones, Katherine (with Jefferson, Lillie and King, Nina L.), "The Civil Rights Movement in Newton: 1950s – 1970s;"

Marcou, Elizabeth Nash, "A Study in Black-White Relations Past and Present in Newton" (1972);

City of Newton, Low-Moderate Income Housing Study (1968);

Route 128: Boston's Road to Segregation (Report of the Massachusetts Advisory Committee to the U.S. Commission on Civil Rights and the Massachusetts Commission Against Discrimination, January 1975).