

City of Newton, Massachusetts



FY11-15 Analysis of Impediments to Fair Housing Choice



JUNE 1, 2010 – JULY 30, 2015

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1. Introduction and Executive Summary

Overview

The FY11-15 *Analysis of Impediments to Fair Housing Choice*, or *FY11-15 AI*, was developed to accompany the *FY11-15 WestMetro HOME Consortium Consolidated Plan*.¹ The *FY11-15 AI* has been completed to meet the requirements of the Housing and Community Development Act and the U.S. Department of Housing and Urban Development (HUD) regulations governing the preparation of the Consolidated Plan. Funding for this analysis was provided by the Community Development Block Grant program (CDBG) and HOME Investment Partnerships Program (HOME).

Under the HOME and CDBG statutes, the Consolidated Plan's certification to affirmatively further fair housing (AFFH) requires all entitlement communities, such as Newton, to undertake fair housing planning. A jurisdiction is affirmatively furthering fair housing when it **1)** has a current *Analysis of Impediments to Fair Housing Choice*, **2)** is implementing the recommendations that follow from that analysis, and **3)** is documenting its efforts to improve fair housing choice in the community. HUD suggests that entitlement communities, such as Newton, conduct Fair Housing Planning at least once every three to five years. Newton's previous AI was developed for FY06-10.

Objectives of the *FY11-15 AI*

Fair housing choice is the right to equal access to all types of housing. Fair housing choice exists when *all* residents of a community have the ability to freely choose among options that will afford them access to safe, sanitary and affordable housing in neighborhoods where they can thrive. Fair housing choice is impeded by issues of affordability (where people cannot afford housing of their choice) and housing discrimination (where people are not allowed to live where they choose). The overall goals of the *FY11-15 AI* are the following:

1. To identify impediments to fair housing choice in Newton by presenting quantitative and qualitative data from a variety of sources;
2. To identify actions that will sustain current efforts to further fair housing and build on progress made in the past, such as adherence to the principles and goals identified in Newton's *Fair Housing Action Plan*, and adopting new actions and strategies, as needed;
3. To provide a historical framework on fair housing for City officials, policy makers, City staff, as well as private and public stakeholders, enabling them to take the lead in affirmatively furthering fair housing by initiating dialogue and institutionalizing fair housing best practices and policies; and
4. To serve as a resource for consumers, producers, and housing providers.

¹ The WestMetro HOME Consortium includes the communities of Bedford, Belmont, Brookline, Framingham, Lexington, Lincoln, Natick, Needham, Newton, Sudbury, Waltham, and Watertown

Executive Summary

Supporting Newton's cherished diversity is a fundamental goal. The City of Newton believes that diversity should not only be welcomed but should be actively sought. To achieve such diversity, individuals and families must have equal opportunity in finding and maintaining suitable housing at affordable costs, free from discrimination. Efforts to affirmatively further fair housing have increased considerably in recent years in both the private and public sectors. Still, impediments to fair housing choice exist in Newton, some unchanged from the results of the *FY06-10 AI*, and others more recently documented.

Conclusions from past fair housing analyses have clear differences: Newton's *1996 Fair Housing Plan* concluded that economics rather than discrimination determines who lives in Newton. The *FY06-10 AI* challenged that assertion, hypothesizing that inequity exists in the Newton housing market; economics is not the only factor that affects housing choice. Recent fair housing testing audits conducted in the Newton housing market (the Audits) and anecdotal evidence has provided reliable evidence that dispelled any doubt that discrimination is present in Newton and proved that economics is not the sole impediment to housing choice.

In Newton, an educational gap exists on fair housing rights and responsibilities for some housing consumers, providers and producers. For consumers, this gap translates into a lack of empowerment and ability to exercise fair housing rights. For producers and providers, the gap translates to both intentional and inadvertent discrimination. This gap results in the violation of fair housing law and denial of housing. Increasing fair housing awareness in the community and within the private sector through education, training, and enforcement efforts is vital. Such efforts will empower consumers by protecting their rights and will enforce the responsibilities of housing producers and providers.

Affordable housing is inextricably linked to fair housing, as the goals of each are to promote equal access and housing choice. There are significant obstacles that make developing affordable housing in Newton a difficult task to achieve. The biggest impediments to developing affordable housing in Newton is the lack of available developable land for new housing coupled with extremely high home and land prices, limited by-right development, and the cost of hazard abatement such as deleading.

To affirmatively further fair housing, it is the responsibility of the public sector to identify, integrate and apply fair housing principles and best practices equally across all housing-related decision making, policies, programs, and protocols. Many of these best practices can be found in Newton's *Fair Housing Action Plan*, while others still require development and refinement. It is essential that a collective vision is established and communicated within the public sector to ensure that fair housing principles and best practices are institutionalized.

To strengthen Newton's existing commitment of being a welcoming, diverse community, it is integral to all efforts that fair housing be championed in both the public and private sectors. As demographics shift and local, state, and federal regulations, policies and programs continually evolve, it is essential to ensure that this framework is not only sustained but continues to gain momentum over time and across sectors. Both the public and private sectors should be

proactive in analyzing fair housing concerns and consider mitigating steps necessary to neutralize discriminatory outcomes.² Newton and the WestMetro HOME Consortium can lead the way in identifying fair housing impediments and actions to overcome them at a regional scale.

Newton can continue to actively seek diversity by becoming fully aware of the existence, nature, extent, causes and challenges of housing inequality and working together to take the necessary steps to overcome them. However inexcusable, one should not dwell on the results of the Audits; rather, this knowledge should serve as the call to actively and diligently eliminate impediments to housing choice and housing discrimination.

Impediments to Fair Housing Choice and Subsequent Actions

An in depth identification of impediments to fair housing choice in Newton and the actions identified to overcome these impediments can be found in the Conclusions and Recommendations section of this report. A summary of the impediments that have been identified and the actions needed to overcome those impediments is as follows:

Impediments Identified in Public Sector:

Impediment: Zoning, land use policies, and neighborhood opposition can limit the ability to develop and can affect siting of affordable housing

Actions: Revise certain land use and zoning policies; support smart growth principles; broaden the categories of by-right residential uses; continue to capitalize programs which streamline funding for affordable housing projects; continue to provide education to community and public officials, relevant boards, and developers

Impediment: The system for reviewing, approving, and monitoring residential developments for compliance with all applicable architectural accessibility requirements needs to be examined and strengthened

Actions: Develop a comprehensive and integrated plan complete with established procedures; conduct staff training; assign responsibility, accountability, and better communications across City departments; develop policies in housing programs to assure compliance with all architectural access requirements

Impediment: To become proactive, fair housing best practices need to be identified and fully integrated into all public sector housing programs and policies

Actions: Housing staff and public officials must continually work with the Fair Housing Committee and other relevant parties to identify and integrate best practices into existing policies, or establish new policies as needed

² Korman, H. *Underwriting for Fair Housing? Achieving Civil Rights Goals in Affordable Housing Programs*. Journal of Affordable Housing, Volume 14, No.4, Summer 2005.

Impediments Identified in Private Sector:

Impediment: Housing discrimination against protected classes occurs in the Newton's rental and for-sale real estate markets

Actions: Each action in the *FY11-15 AI* will contribute to eradicating this impediment, including: encouraging self-monitoring by the real estate industry; initiating and continuing education, training and advocacy programs; establishing consistent fair housing monitoring and data collection efforts, such as better utilization of enforcement and complaint systems, and; establish relationships with lenders conducting business in Newton

Impediments Identified in Public and Private Sector:

Impediment: An educational gap on fair housing rights and responsibilities exists for some housing consumers, providers and producers, resulting in fair housing law violations and a lack of consumer empowerment

Actions: Strengthen education, training, and advocacy efforts and programs; build upon internal resources and capacity; champion fair housing in the private and public sectors

Impediment: More comprehensive fair housing data, in conjunction with consistent monitoring, is needed to ensure that fair housing practices in both market rate and subsidized housing units not only remain constant, but improve and expand

Actions: Develop a methodology to collect and incorporate fair housing-related data into existing housing inventory databases; assure comprehensive compliance with all applicable civil rights requirements within all City housing activities through tools such as the civil rights checklist

Impediment: High housing, development, and health safety requirement costs coupled with the lack of available land for new development ultimately results in limited affordable housing opportunities and housing choice

Actions: Encourage the development of all types of affordable housing throughout Newton; continue to support programs that create or preserve affordable housing and which help leverage additional funds for these efforts; establish new programs that increase the ability to create and preserve affordable housing and housing choice

A. WHO CONDUCTED

The Housing and Community Development Division (the Division) of the City of Newton Planning and Development Department has prepared the *FY11-15 AI*.

B. PARTICIPANTS

The *FY11-15 AI* was developed in conjunction with the help and participation of fair housing advocates, staff from the Planning and Development Department, Health and Human Services and the Inspectional Services Departments, educators and brokers in the local real estate industry, Newton Public Schools' staff, the Fair Housing Center of Greater Boston, the Newton Human Rights Commission, Newton Fair Housing Committee, Newton Housing Authority and nonprofit housing and human service providers in the area.

C. METHODOLOGY USED

Focus groups were conducted with individuals representing housing, public services, public administration, and advocacy organizations. Feedback from a wide array of key stakeholders and active community members also provided a detailed and diverse perspective of fair housing in both Newton and the Greater Boston area. Much of the jurisdictional background data and statistical analysis is based on data from the U.S. Census, the *FY11-15 WestMetro Consolidated Plan*, *Newton's 2007 Comprehensive Plan*, the Massachusetts Department of Housing and Community Development (DHCD), the Massachusetts Community and Banking Council and the Fair Housing Center of Greater Boston (FHCGB). Lastly, a list of fair housing complaints filed with the Massachusetts Commission Against Discrimination (MCAD), HUD, the FHCGB and the Newton Human Rights Commission was requested and obtained.

To obtain diverse perspectives and identify impediments to fair housing choice in Newton, a series of meetings, focus groups, and discussions were held throughout the development of the *FY11-15 AI*.

- **June 2, 2009** ***Affordable Housing Needs Focus Group for Housing Developers and Human Service Providers***³
Topic: Affordable housing needs identification
- **June 3, 2009** ***Fair Housing Committee***⁴
Topic: Affordable housing needs identification
- **June 16, 2009** ***Meeting with Chief Planner, Planning and Development Department***
Topic: The impact of Floor Area Ratio exemption on affordable housing

³ As part of the *FY11-15 WestMetro HOME Consortium Consolidated Plan Needs Assessment*

⁴ *Id.*

- **October 7, 2009** ***Newton Fair Housing Committee***
Topic: Preliminary discussion on conducting the Analysis of Impediments to Fair Housing Choice in Newton
- **October 14, 2009** ***Newton Human Rights Commission***
Topic: Overview of the Analysis of Impediments to Fair Housing Choice
- **October 19, 2009** ***Mayor's Committee for People with Disabilities***
Topic: Overview of Impediments to Fair Housing Choice
- **November 4, 2009** ***Newton Fair Housing Committee***
Topic: What impediments from FY06-10 remain relevant in Newton today? What actions have been taken to challenge these impediments?
- **November 10, 2009** ***Newton Human Rights Commission***
Topic: What barriers and impediments to fair housing opportunities exist in Newton? What actions can be taken to address these impediments?
- **November 16, 2009** ***Mayor's Committee for People with Disabilities***
Topic: Discussion of experiences and what actions could be taken to address the impediments.
- **November 16, 2009** ***Meeting with Fair Housing Commissioner, Newton Human Rights Commission***
Topic: Discussion regarding the Human Right Commission's Fair Housing Complaint System, the nature and outcome of the complaints, and the system's strengths and areas for improvement
- **December 2, 2009** ***Newton Fair Housing Committee***
Topic: Continuation of November discussion, including identifying any new impediments to fair housing choice
- **December 8, 2009** ***Meeting with Citywide Latina Family Liaison, Newton Public Schools***
Topic: Discussion on Impediments to Fair Housing Choice, actions to overcome them, perceptions of fair housing and of Newton from the Latino community, and effective outreach techniques to the Latino community in Newton
- **December 9, 2009** ***Meeting with Director of The Spencer School of Real Estate***
Topic: Educating the real estate broker community and landlords on fair housing responsibilities; impediments to fair housing choice from an educator of real estate agent's perspective

- **January 11, 2010** ***Focus Group with Housing and Human Service Providers***
Topic: What barriers and impediments to fair housing opportunities exist in Newton? What actions can be taken to address these impediments?

- **February 24, 2010** ***Meeting with Newton Housing Authority***
Topic: Fair housing from the Newton Housing Authority's perspective; Relationship between landlords and Housing Choice Voucher Program (Section 8) holders

- **June 7, 2010** ***Planning and Development Board***
Topic: Staff report on the FY11-15 Analysis of Impediments to Fair Housing Choice

D. ORGANIZATION OF REPORT

The *FY11-15 AI* is divided into nine sections. Sections 4 through 8 provide a comprehensive review on respective areas in the public and private sectors that impact fair housing. Each section is described below:

Section 2, **Legal Framework** briefly summarizes related federal and state and local fair housing laws and policies.

Section 3, **Past Fair Housing Plans** provides a summary of conclusions from prior fair housing analyses including the *1996 Fair Housing Plan*, an update to the Analysis of Impediments in 2002 and the *FY06-10 Analysis of Impediments (the FY06-10 AI)*.

Section 4, **Analysis of Public Sector** is a comprehensive review of areas within the public domain such as zoning regulations, tax policies, neighborhood revitalization, building codes, and housing-related boards, committees, and commissions.

Section 5, **Analysis of Private Sector** is a comprehensive review of lending and real estate practices in Newton and the Greater Boston area. This section also details the process and results of the Audits conducted in the Newton in 2005, 2006 and 2007.

Section 6, **Analysis of Public and Private Sector** is a comprehensive review of fair housing monitoring, enforcement, housing complaint systems, education, and other interactions between the public and private sectors. This section also briefly discusses the importance of housing affordability and economic factors and their impacts on fair housing choice. A comprehensive analysis and strategies to address barriers to affordable housing can be found in both the *FY11-15 WestMetro HOME Consortium Consolidated Plan* and *Newton's 2007 Comprehensive Plan*.

Section 7, **Evaluation of Current Public Sector Housing Programs, Policies and Activities** summarizes and reviews Newton's housing programs and policies and their impact on fair housing choice. This section also summarizes recent initiatives undertaken to promote fair housing in Newton.

Section 8, **Evaluation of Newton's Current Fair Housing Legal Status** summarizes the current state of complaints and other pending legal issues involving fair housing choice.

Section 9, **Conclusions and Recommendations** presents the impediments to fair housing choice in Newton, the actions identified to overcome these impediments, and the overall recommendations of the *FY11-15 AI*.

The **Appendices** provide jurisdictional background data on members of the federal and state protected classes along with other relevant and documents listed below:

- A. Jurisdictional background data
- B. Mayor's Order: Establishment of Fair Housing Committee
- C. Revised Human Rights Commission Ordinance
- D. Rules of Procedure for Complaint of Unlawful Practices
- E. Human Rights Commission Discrimination Intake and Complaint Forms

2. Legal Framework

A. DEFINITIONS

For the purposes of this analysis, *housing discrimination* is defined as any actions, omissions, or decisions taken that restrict housing choice or the availability of housing or have that effect on one or more individual of a *protected class*. The protected classes in Massachusetts are:

Protected under both federal and state law:

- Color
- Disability
- Familial status
- National origin
- Race
- Religion
- Sex

Protected under Mass law:

- Age
- Ancestry
- Genetic information
- Marital status
- Military or veteran status
- Sexual orientation
- Source of income

Disparate impact occurs where policies, practices, or procedures that appear neutral on their face operate to deny or adversely affect the availability of housing to persons based on their protected class status. Such actions or decisions may also constitute an impediment to fair housing choice.⁵

B. RELEVANT FEDERAL, STATE AND LOCAL LAWS

Fair Housing Act (42 U.S.C. § 3601, et. seq.), as amended: Title VIII of the Civil Rights Act of 1968 (Fair Housing Act): prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), and handicap (disability).

Title VI of the Civil Rights Act of 1964: Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance.

Section 504 of the Rehabilitation Act of 1973: Section 504 prohibits discrimination based on disability in any program or activity receiving federal financial assistance.

Section 109 of Title I of the Housing and Community Development Act of 1974: Section 109 prohibits discrimination on the basis of race, color, national origin, sex or religion in programs and activities receiving financial assistance from HUD's Community Development and Block Grant Program.

⁵ United States Department of Housing and Urban Development. *Fair Housing Planning Guide*. 1996.

Title II of the Americans with Disabilities Act of 1990: Title II prohibits discrimination based on disability in programs, services, and activities provided or made available by public entities. HUD enforces Title II when it relates to state and local public housing, housing assistance and referrals.

Architectural Barriers Act of 1968: The Architectural Barriers Act requires that buildings and facilities designed, constructed, altered, or leased with certain federal funds after September 1969 must be accessible to and useable by handicapped persons.

Age Discrimination Act of 1975: The Age Discrimination Act prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.

Executive Order 11063: Executive Order 11063 prohibits discrimination in the sale, leasing, rental, or other disposition of properties and facilities owned or operated by the federal government or provided with federal funds.

Executive Order 12892: Executive Order 12892, as amended, requires federal agencies to affirmatively further fair housing in their programs and activities, and provides that the Secretary of HUD will be responsible for coordinating the effort. The order also establishes the President's Fair Housing Council, which will be chaired by the Secretary of HUD.

Executive Order 12898: Executive Order 12898 requires that each federal agency conduct its program, policies, and activities that substantially affect human health or the environment in a manner that does not exclude persons based on race, color, or national origin.

Executive Order 13166: Executive Order 13166 eliminates, to the extent possible, limited English proficiency as a barrier to full and meaningful participation by beneficiaries in all federally assisted and federally conducted programs and activities.

Executive Order 13217: Executive Order 13217 requires federal agencies to evaluate their policies and programs to determine if any can be revised or modified to improve the availability of community-based living arrangements for persons with disabilities.

State Legislation

Massachusetts General Law Chapter 151B (Massachusetts Anti-Discrimination Law): Regarding prohibited discriminatory housing practices, Chapter 151B closely resembles the federal Fair Housing Act. Chapter 151B has significantly expanded the classes of individuals protected under the Fair Housing Act to further include: age, marital status, sexual orientation, ancestry, recipients of public or rental assistance, military and veteran status, or genetic information. Chapter 151B protection based on familial status does not apply to dwellings containing three apartments or less, *if* one of the apartments is occupied by an elderly or infirm (disabled or suffering from a chronic illness) person “for whom the presence of children would constitute a hardship.” Familial status is also protected under the Massachusetts Lead Paint

Law, which prohibits the refusal to rent to families with children under six, or the eviction or refusal to renew the lease of families with children under six because of lead paint.⁶

Local Legislation

The Newton Human Rights Commission Ordinance addresses the City's responsibilities regarding housing discrimination complaints. It is the City's stated policy to see that each person regardless of protected class status within the meaning of M.G.L. Chapter 151B and the Federal Fair Housing Act (as amended) shall have equal opportunity in or access to housing or housing accommodations offered for sale, lease or rental housing. Furthermore, the ordinance states that it is unlawful for any person to engage in any act of discrimination with respect to the sale, lease or rental of housing or housing accommodations in violation of the foregoing policy.

Other Federal Legislation Relevant to Fair Housing

The Home Mortgage Disclosure Act (HMDA) requires certain lenders to make information available on the number and types of lending applications received and whether the applications were accepted. The information is broken down by census tract, sex, race and income.

The Community Reinvestment Act (CRA) requires financial institutions to meet the credit needs of their communities, with a particular focus on low-and moderate-income residents and areas, consistent with safe and sound operations. The requirements of the Act allow governments and advocacy groups to raise questions about the adequacy of a lending institution's regulatory compliance, thus creating an incentive for institutions to be responsive to the needs of their communities.

⁶ Massachusetts Department of Housing and Community Development. *Analysis of Impediments to Fair Housing Access and Action Steps to Mitigate Impediments*. 2007.

3. Past Fair Housing Plans

Newton fair housing documents have become increasingly more comprehensive in evaluating fair housing opportunity beyond economics and affordability alone. The conclusions of *Newton's 1996 Fair Housing Plan*, the 2002 update to the Analysis of Impediments and the *FY06-10 Analysis of Impediments* are outlined below.

A. 1996 FAIR HOUSING PLAN

Newton's *1996 Fair Housing Plan* concluded that economics (e.g. lack of affordability) determines who lives in Newton. Listed below are the impediments to fair housing identified in the 1996 Plan:

- A lack of available developable land for affordable housing.
- The high cost of land acquisition, contributing to high development costs.
- The lack of affordable properties for homeownership, specifically for low-and moderately-low income homebuyers.
- The overall shortage of rental units throughout the City of Newton.
- The limited capacity of nonprofit housing providers due to the lack of capitalization and adequate staffing.
- Per-unit development limits on some financing sources, which does not reflect the cost of development in high cost areas such as Newton.
- The inability of the City to act quickly in a highly competitive real estate market.
- Extremely low rental vacancy rates.
- The existence of lead-based paint hazards.
- Zoning and land use policies limit opportunities to develop affordable housing.

B. 2002 ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE UPDATE

In June 2002, as part of an update to the AI, the City conducted a survey that placed more focus on discrimination and equal access to housing in Newton. The survey was sent to local nonprofits, housing service providers, lenders, realtors, and community representatives. Twenty-one responses were received. The results were as follows:

- Half of those surveyed responded that they do not believe that there are impediments to fair housing choice, specifically race discrimination, discrimination against people with disabilities, or discrimination against persons of various social class in the City of Newton. Thirty-three percent (33%) believe that impediments exist and 17 percent (17%) responded with no comment.
- Almost forty percent (39%) believe that there are impediments to fair housing choice related to landlords hesitating to rent to families with small children. Twenty-two percent (22%) did not believe that this is an impediment and 39 percent (39%) responded with no comment.
- Thirty-three percent (33%) believe that the City of Newton has an effective method in place to field fair housing complaints, and refer concerned parties to the appropriate agencies.

Twenty-eight percent (28%) did not believe that the City of Newton has an effective method and 39 percent (39%) had no comment.

The survey responses, together with public and administrative meetings, identified the following four major impediments to fair housing choice in Newton in 2002:

- The cost of housing and the incentives to develop, maintain, and improve affordable housing are affected by public policies, such as land use controls, zoning ordinances, building codes, fees and charges.
- The high housing costs in the City of Newton prevent low- and moderate-income families from purchasing or renting housing units, as well as restrict prospective renters/buyers to areas of the City where transportation to employment opportunities may be limited.
- Landlords reluctant to rent to families with small children in the City of Newton are an impediment to fair housing choice.
- The City of Newton does not have an effective method in place to field fair housing complaints and refer concerned parties to the appropriate agencies.

C. FY06-10 ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE

Newton's *FY06-10 Analysis of Impediments* extended the analysis beyond a discussion of affordability and economic factors. This *AI* contained more in-depth analysis on members of protected classes (e.g. race, age, families, and people with disabilities), and the impact of race and national origin discrimination on fair housing choice in Newton. Principal impediments and their related courses for action were:

Impediment: Zoning and land use policies limit the availability of land to develop affordable housing.

Actions: Change land use and zoning policies.

Impediment: High cost of housing and lack of available land for new development limits opportunities and choices.

Actions: Encourage the development of all types of affordable housing throughout Newton.

Impediments: Lack of fair housing education and outreach.

Actions: Initiate education and outreach programs.

Impediments: Monitoring and investigative testing is needed to ensure fair housing practices.

Actions: Conduct monitoring and investigative testing.

D. FAIR HOUSING: BEYOND AFFORDABILITY

The results of the Audits of Newton’s rental and for-sale housing markets provided the most crucial knowledge regarding fair housing since the *FY06-10 AI*. The Audits were conducted by the Fair Housing Center of Greater Boston (FHCBG) in 2005 and 2006 and by the Disability Law Center (DLC) in 2007. Newton was the first municipality in Massachusetts to contract with the FHCBG to test for discrimination in private market real estate practices.

Overall, out of 86-paired tests, evidence of discrimination against a member of a protected class was found in 40 cases, or 47 percent.⁷ The Audits provided reliable evidence that dispelled any doubt that discrimination is present in Newton and proved that economics is not the sole impediment to housing choice in Newton.

Table 1. Outcome of Housing Discrimination Testing Audits in Newton, 2005 - 2007

Audit Type	Protected Class Tested	Evidence of Discrimination	%
Rental (2005)	Familial status, source of income involving Section 8 vouchers, race involving Black/African American and national origin with different national origin backgrounds	11 out of 24 paired tests	46
Sales (2006)	Race and national origin involving African Americans and Hispanic / Latinos	4 out of 10 paired tests	40
Disability (2007)	People with disabilities	25 out of 52 paired tests	48
Total:		40 out of 86 paired tests	47

Source: Fair Housing Center of Greater Boston and Disability Law Center

Motivated by the results of the Audits and in a concerted effort to improve knowledge and enforcement of fair housing rights and responsibilities, City housing staff with the help of the Fair Housing Task Force applied for and received a Fair Housing Initiatives Program Grant (FHIP) totaling \$98,044 from HUD in 2006. The FHIP grant provided funding for fair housing education and outreach in the form of training sessions to 274 people in Newton and across the WestMetro HOME Consortium and distribution of over 8,200 fair housing brochures in various languages. A fair housing website was also developed where a visitor can now find resources on fair housing issues and laws and file a complaint with the newly developed complaint intake system of the Newton Human Rights Commission.

Lastly, the Fair Housing Task Force completed the Newton *Fair Housing Action Plan* (FHAP) in 2008. The FHAP consists of 12 specific recommendations for the City to act on to address the impediments to fair housing identified in the *FY06-10 AI*. The *Fair Housing Action Plan* also guides many of the actions identified in this analysis. In 2009 the Task Force officially became the Fair Housing Committee, which is continually working with staff toward implementing these actions.

⁷ See Section 5 for a breakdown of the results of *the Housing Discrimination Audit Report to the City of Newton* (Fair Housing Center of Greater Boston, 2006) and *Disability Discrimination Audit of the Housing Market of Newton Report*, (Disability Law Center, 2007). The complete reports are available in the *Newton Fair Housing Action Plan*, November 2008, located online at www.ci.newton.ma.us/fairhousing/

4. Analysis of the Public Sector

A. ZONING

Zoning can be an important and an effective tool in affirmatively furthering fair housing since it can limit, or alternatively, support a variety of patterns and types of housing development enabling a more diverse population to be served. When analyzing zoning and site selection, the impact of Newton's zoning ordinances and other land use policies on the development and location of affordable housing needs to be considered. The *FY06-10 Consolidated Plan* and *FY06-10 AI* identified four general zoning impediments to fair housing choice. Some of these impediments are still relevant today, although progress has been made in certain areas that enable more diverse housing for a greater number of household types in Newton.

Unchanged from the *FY06-10AI* is the first zoning-related impediment in Newton: the dimensional requirements for commercial/business zones are not conducive to residential development. Business district zones have restrictive dimensional requirements that discourage mixed-use development and the creation of additional residential development above retail. These zones also make no special provisions for types of developments such as efficiencies, or single room occupancy (SRO) units, which may provide more affordable alternatives to larger homes and condominiums adding to a greater diversity of available housing to accommodate different households.

Also, still relevant, is that dimensional and parking standards are often unreasonably prohibitive to development, even within land that is zoned for residential use. For instance, in village center areas, historic lot sizes are often much smaller than the minimum lot size required for new residential development either by-right or by special permit. The City and state zoning laws have extensive "grandfathering" rules to protect older lots from area and frontage rules after they were created, but they only apply to one- and two- family dwellings and not business districts and uses.

Street and utility requirements in Newton's zoning ordinance also hinder affordable residential development. Standards within the City for required street widths, curbing types, and sidewalk surfaces are intended to meet public safety needs, and are often imposed even on driveways internal to projects. However, some of these standards are excessive for the safety needs of certain developments and only add unnecessary costs that inhibit residential development. One example of an expensive requirement is vertical granite curbing for internal driveways.

Regulatory Tools in Furthering Fair Housing:

Inclusionary Zoning Ordinance (IZO)

Newton's IZO is an integral component in increasing housing affordability in the city. The IZO applies to developments requiring a special permit. Any development for three or more dwelling units falls under the IZO, which requires that at least 15% of the created units be restricted to below-market price levels. A significant component of the IZO is a provision that allows developers to make a cash payment in lieu of developing an affordable unit. These cash

payments are divided equally between the City and the Newton Housing Authority to construct, rehabilitate, or preserve additional affordable housing units.

The Newton Housing Partnership, the City's Planning and Development Department and the advocacy group, Housing Action Plan Initiative (HAPI), coordinated efforts that resulted in amending the Inclusionary Zoning Ordinance in 2009. The most significant fair housing component of the revised IZO is the provision that inclusionary units adhere to the "*Uniform Local Resident Selection Preferences in Affordable Housing*," policy created and recommended by the Newton Fair Housing Task Force, which can be found as Appendix C in the *Fair Housing Action Plan*. Overall, the amendments to the IZO include:

- Expanding the option for developers to pay a fee in lieu of building actual units and revising the formula for determining the fee;
- Providing incentives to developers to exceed the mandated amount of inclusionary housing;
- Updating marketing and tenant selection practices;
- Clarifying the calculation of prices at which inclusionary units are to be sold to provide a greater "window of affordability" to potential applicants;
- Clarifying the flexibility in sales prices at which inclusionary units may be sold;
- Assuring that units developed under the ordinance count toward the City's Chapter 40B requirement, where applicable;
- Clarifying that rehabilitation of existing units will not be contributable toward inclusionary zoning threshold requirements and;
- Restoring paragraphs inadvertently omitted by the most recent amendments to the section to create consistency with the handling of other administrative actions related to the ordinance.

Newton's Accessory Apartment Ordinance

Newton's Accessory Apartment Ordinance provides small apartments for family members or renters in a building originally constructed as a single family dwelling or in a detached building located on the same lot. The residences in which accessory apartments are located must be owner-occupied and meet other building and zoning code qualifications.

In 2006, Newton's Board of Aldermen approved funding for the Accessory Apartment Incentive Program ("AAIP") with local Community Preservation funds. The AAIP provided loans or grants and technical assistance to homeowners who wanted to create accessory apartment units in their houses in exchange for an affordability restriction on the unit. Unfortunately, although over 350 homeowners showed interest in creating an accessory apartment, none of them signed up for the program partly due to the restrictions of the Ordinance at the time. The Board of Aldermen recently adopted revisions to the Accessory Apartment Ordinance that make it easier to create an accessory apartment.

Accessory apartments are an important resource for Newton and the revised ordinance and any program developed similar to the AAIP in the future would be an excellent opportunity to expand housing choice in the community while utilizing existing housing stock, especially for elders that wish to age-in-place, young couples or single member households. It would also present the

opportunity to educate owners who provide an accessory unit on landlord and tenant rights and responsibilities under fair housing laws.

B. SITE SELECTION

The *FY11-15 Consolidated Plan* identified neighborhood opposition, often referred to as Not in My Back Yard, or “NIMBY-ISM,” as a barrier to affordable housing. NIMBYISM is not exclusively a Newton issue; it is a reality in communities across the state and nation. Neighborhood opposition to affordable housing - or any type of new housing - may be an example of a disparate impact form of discrimination if its effect is to discourage certain protected classes from housing opportunity. For example, if opponents insist that all one-bedroom units be developed, that decision will have an adverse impact on families with children (familial status protected class).

For this reason, NIMBYISM is also an impediment to fair housing choice in Newton. That is not to say that only 3 bedroom housing must be built at all times, but it does necessitate that fair housing principles be integrated into the already multi-faceted decision making process when a development is proposed. Newton has overcome NIMBYISM in the past, evidenced by its success with a controversial yet exceptionally important Massachusetts law for affordable housing development, the Massachusetts Comprehensive Permit Law (otherwise known as Chapter 40B).

Massachusetts Comprehensive Permit Law / Chapter 40B

Chapter 40B was designed to assist both for-profit and nonprofit developers in building affordable housing in cities and towns which are below a threshold of 10% subsidized housing. In such instances, if a proposed 40B development includes at least 20 - 25% state or federally assisted affordable units, the law allows the local Zoning Board of Appeals to override local requirements and regulations that are inconsistent with affordable housing needs if environmental and planning concerns have been addressed. A developer who is denied a comprehensive permit may appeal the decision of the Zoning Board of Appeals to the state Housing Appeals Committee. The developer may also appeal to the Committee if the permit is granted, but with conditions that may render the proposal economically unfeasible.

Because 40B supersedes most local zoning regulations, housing developments are more likely to be denser, have smaller setbacks, and more lenient parking requirements than the surrounding neighborhood. While 40B projects have typically encountered some neighborhood opposition, nearly all 40B projects formally proposed have been approved in Newton, with appeals limited to relatively minor aspects of the development, and most over time have come to be viewed as community assets.

Newton residents have shown support in many Chapter 40B projects in the past. Since Chapter 40B was enacted in Massachusetts in 1969, the total number of units in Newton built with a Comprehensive Permit is about 1,262 of which 675 (53 percent) are affordably priced. Additionally, these mixed-income developments are serving a diverse population. A breakdown of 40B/Comprehensive Permit projects by housing unit type follows below:

Housing for Families: 780 total, 217 affordable

Housing for Seniors: 416 total, 392 affordable

Housing for Seniors/Persons with Developmental Disabilities: 61 total, 61 affordable

Housing for Youth: 5 total, 5 affordable

Chapter 40B does not cover mixed-use development, a popular development strategy especially in a dense and built-out city such as Newton. Although few affordable units have been produced with the Inclusionary Zoning Ordinance to date, it is the hope that more IZO units will be created in the future once mixed-use development is the favored model of development in Newton.

C. NEIGHBORHOOD REVITALIZATION AND IMPROVEMENTS

The City is actively engaged in promoting and sustaining affordable and equal access to housing opportunities for low- and moderate-income households. In addition to programs that promote affordable housing, Newton has engaged in a number of improvements to revitalize lower-income neighborhoods and to increase accessibility to public facilities for persons with disabilities.

The City of Newton's neighborhood improvement program uses federal Community Development Block Grant (CDBG) funds to improve the public facilities and infrastructure in eligible neighborhoods throughout the City. According to federal CDBG regulations, these area benefit activities may only be undertaken within neighborhoods that meet a requirement that 51 percent (51%) of the area's households have an income that is 80 percent (80%) or less than the area median income (AMI). However, none of the census block groups within the City of Newton meet this requirement.

Consequently, HUD allows cities and counties to use an "exception approach" when there are no areas within the jurisdiction that have at least 51 percent (51%) low- and moderate-income (LMI) residents. In order to be designated as a target neighborhood using this approach, a neighborhood must be within the highest quartile of the City in terms of the concentration of low- and moderate-income residents.

Based on the U.S. Census 2000, which established an LMI threshold in Newton of 26.3 percent (23%), 16 block groups were eligible for designation as target neighborhoods. However, in order to serve the neediest areas of the City, a policy decision was made to prioritize the eligible areas by highest LMI concentration and to connect contiguous block groups where possible.

The percentage of low- and moderate-income residents ranged from 26.4 to 47 percent in the 16 eligible block groups. Four block groups fell into the highest percentage category (37.1 to 47 percent) of low- and moderate-income residents—one in West Newton, one in Newtonville, one in Newton Corner and one in Nonantum. In terms of Nonantum, two contiguous block groups contained 30.3 to 37.1 percent low- and moderate-income residents, and one contiguous block group contained 27 to 30.3 percent. In Newton Corner, one contiguous block had 30.3 to 37.1 percent low- and moderate-income residents. After thoroughly analyzing the data, four Target Neighborhoods were established: Nonantum, Newton Corner, Newtonville and West Newton.

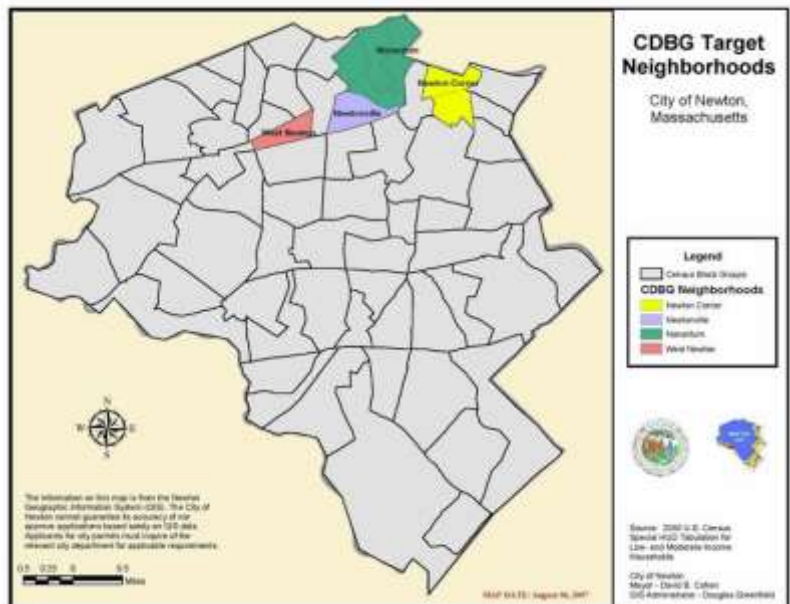
On average, the Target Neighborhoods have a higher racial minority population compared with the City's overall minority population. The Target Neighborhoods average about a 1 percent more ethnically Hispanic/Latino households than the city-wide proportion.

Table 2. Race and Ethnicity Breakdown of CDBG Target Neighborhoods

Target Neighborhood	Race / Ethnicity					
	White	Asian	Black/ African American	Other	Multi-racial	Ethnically Hispanic/Latino
Newton Corner	90.0%	6.1%	1.5%	1.0%	1.1%	2.6%
Newtonville	87.4%	7.0%	2.0%	1.0%	2.0%	3.4%
Nonantum	87.0%	10.2%	1.0%	1.0%	1.3%	2.5%
West Newton	87.0%	7.0%	2.0%	3.0%	1.0%	5.0%
Average	87.9%	7.6%	1.6%	1.5%	1.4%	3.4%
City-wide	89.4%	7.8%	1.5%	0.7%	1.5%	2.5%

Due to the larger size of the Nonantum and Newton Corner neighborhoods, funding rotates between the four neighborhoods every three years, with West Newton and Newtonville alternating the third year slot. The following list delineates when each neighborhood will be funded as outlined in the *FY11-15 Consolidated Plan*.

Fiscal Year	Target Neighborhood
FY11	Nonantum
FY12	West Newton
FY13	Newton Corner
FY14	Nonantum
FY15	Newtonville



The *FY11-15 Consolidated Plan's* needs assessment process provided a toolkit for City staff, advisory committee members, interested citizens and residents to determine, categorize and ultimately prioritize the most pressing needs. It became evident through the needs assessment process that there were four principal categories of neighborhood need:

- Public Infrastructure (roadways, sidewalks, curbs, curb cuts, street trees, water and sewer)
- Public Facilities (public buildings such as fire stations and libraries)
- Parks/Open Space
- Traffic

The City is continually dedicated to supporting improvements in designated target neighborhoods. No impediments have been identified pertaining to neighborhood revitalization and improvement efforts. The *FY11-15 Consolidated Plan* provides further information on the needs assessment and strategic plans identified by each respective CDBG Target Neighborhood's Advisory Committee. The composition of these committees is discussed in greater detail later in this Section.

D. MUNICIPAL AND OTHER PROGRAMS AND SERVICES

The Newton Community Development Block Grant program began in 1975, with one Planning Department staff person and an initial grant of approximately \$650,000. Today, the Newton Housing and Community Development Division has a staff of 9 and an annual combined Community Development Block Grant (CDBG), HOME Investment Partnerships Program (HOME) and Emergency Shelter Grant (ESG) allocation of approximately \$3 million, plus an additional \$2 million it administers as the lead agency of the 12-member WestMetro HOME Consortium. The Division also provides staff support to the Brookline-Newton-Waltham-Watertown Homelessness Consortium and serves as the lead entity for coordinating and submitting the annual, competitive Continuum of Care grant application.

For the past 35 years, the Division has developed and managed a number of programs that help improve the economic, social, physical and housing environments for low- and moderate-income families and individuals living in the Newton community. Currently, the Division administers 11 programs that involve dozens of agencies, local officials, private lenders, non- and for-profit housing developers, businesses and individuals throughout the greater Newton area to support low- and moderate-income housing, community facilities and services, homelessness prevention and rapid-rehousing programs and small business opportunities. More information on the programs, including status updates and recent progress can be found in the *FY11-15 WestMetro HOME Consortium Consolidated Plan*, *FY11 Annual Action Plan*, and in the *FY10 Consolidated Annual Performance Evaluation Report*.⁸

In addition to the relationships and many collaborative efforts with the private sector, Division staff frequently coordinates with the staff of other municipal departments to ensure that the various City organizational units work together on issues that directly affect the provision of housing, neighborhood improvements, accessibility improvements and human service programs. These departments include the Parks and Recreation Department, the Public Works Department, the School Department, Health and Human Services Department, the Public Buildings Department, and the Inspectional Services Department.

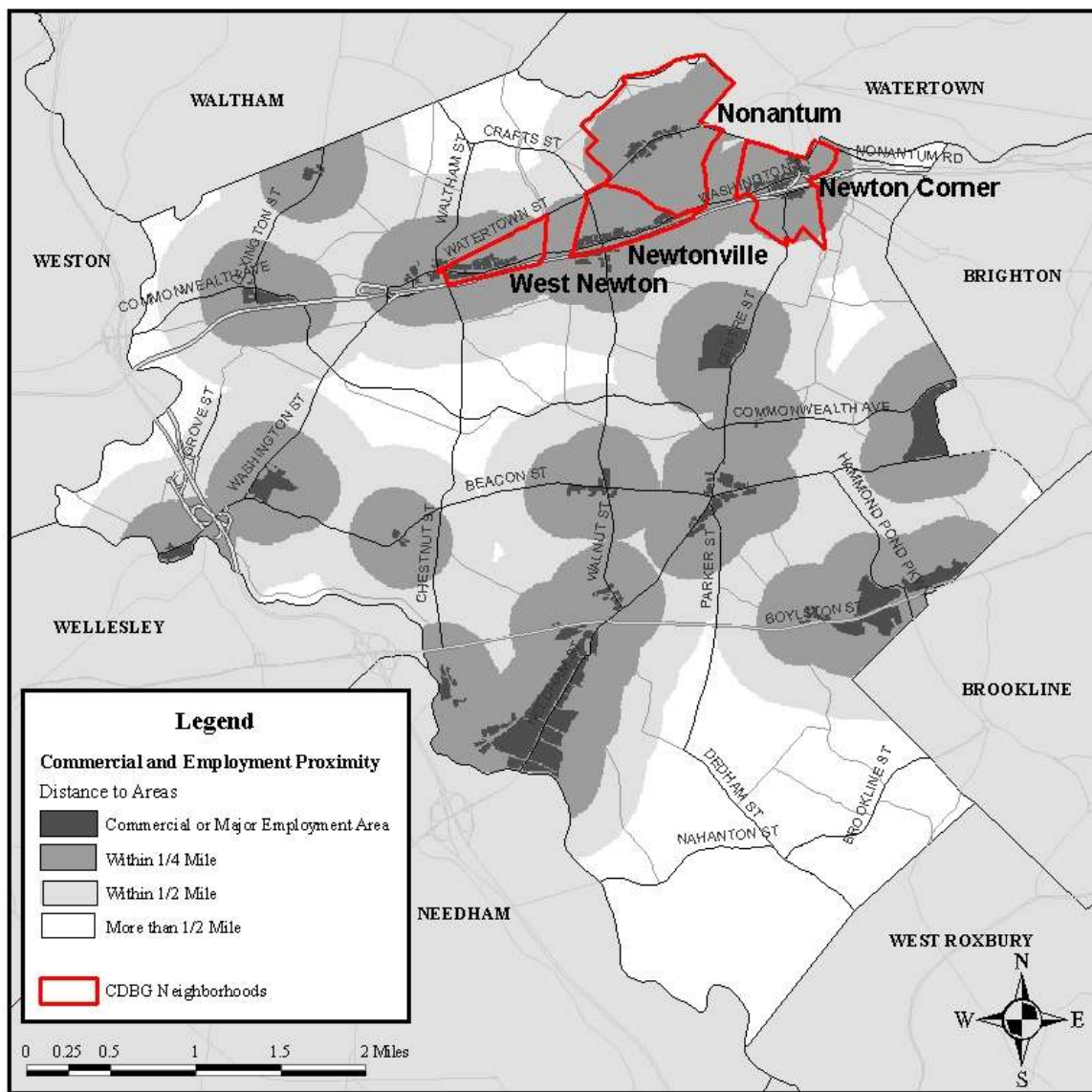
An analysis of these municipal program and other municipal services such as police, fire protection, code enforcement and refuse collection does not indicate any discriminatory practices or unequal access to housing. The Division will continue to utilize local, state and federally funded municipal services and programs through cross-departmental efforts and

⁸ These reports are available online at www.newtonma.gov/Planning/Special_Reports

across public and private sectors to provide equal access in transitional and permanent housing opportunities.

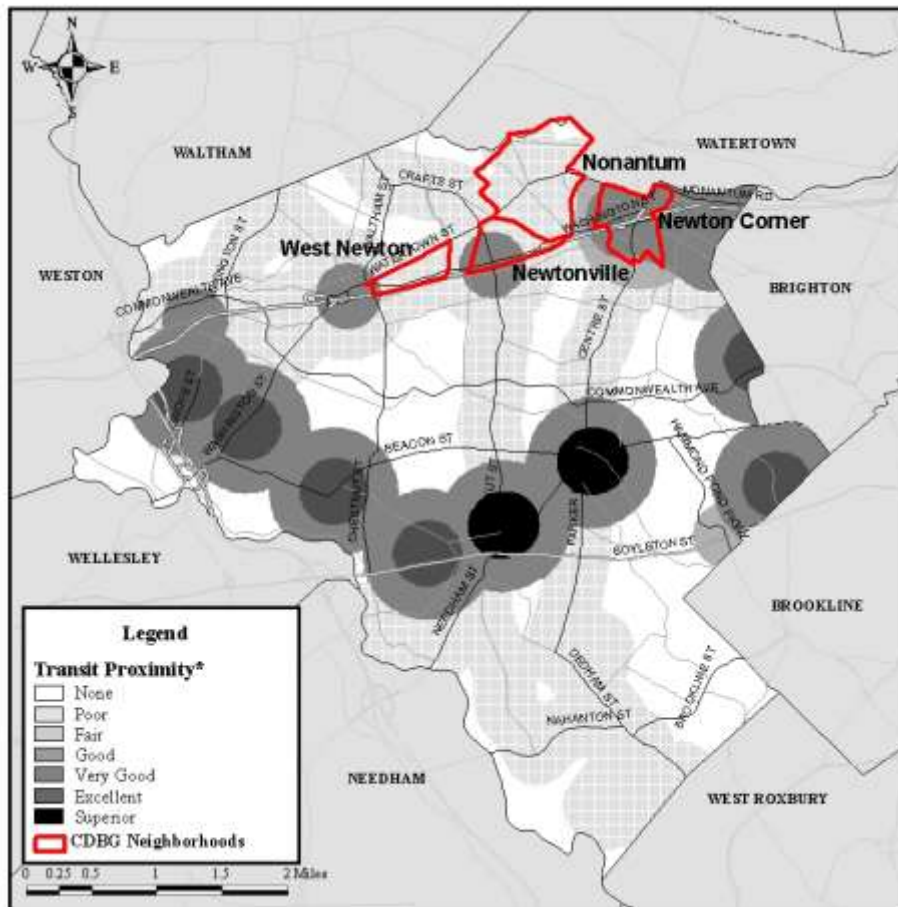
E. EMPLOYMENT-HOUSING-TRANSPORTATION LINKAGE

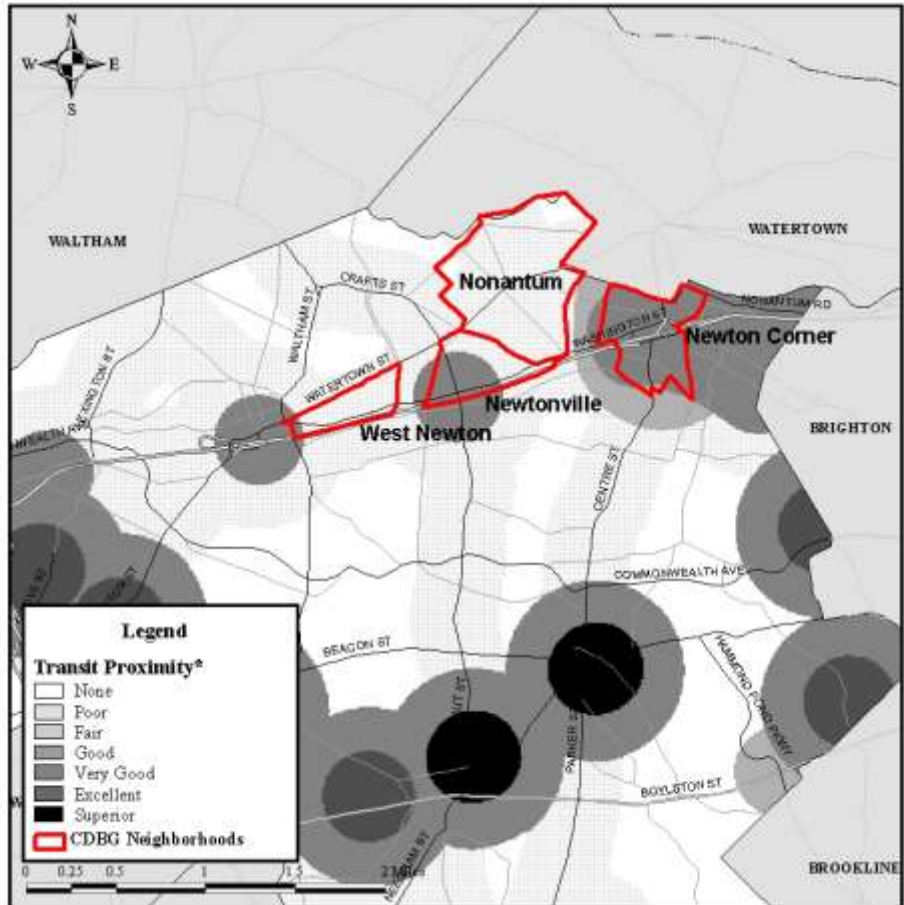
Newton enjoys many community amenities that make it a highly desirable place to live for families and individuals of all ages. The City is well served by public transportation, which makes it an ideal location for residents employed or seeking employment opportunities within the Greater Boston area. Community services, including schools, parks, and recreational facilities are some of the best in the Greater Boston area. Well-dispersed commercial nodes, including within the Target Neighborhoods as shown in the map⁹ below, ensure that residents have adequate access to a variety of commercial services and employment opportunities.



⁹ Newton Comprehensive Plan. 2007.

Because of Newton's proximity to Boston, the City has a well networked transportation infrastructure, including the Massachusetts Bay Transit Authority's (MBTA) commuter rail, subway and bus service. Each low-to-moderate income block group in Newton is served by some form of public transportation. The Boston – Framingham/Worcester commuter rail line is available from Auburndale, West Newton and Newtonville and is adjacent or within close proximity to 11 out of the 16 low-to-moderate income blocks groups in the City. The MBTA Green Line subway service has eight stops from Riverside to Chestnut Hill, with stops at four of the block groups. In all, each Target Neighborhood is within at least a ¼ mile of some type of public transit as shown in the maps below. Some areas of the Target Neighborhoods (Newton Corner and Newtonville) are more proximate to more types of transit than others (Nonantum, parts of West Newton). One goal of Newton's *Comprehensive Plan* is to promote accessibility to transportation for all residents of Newton, including the population that does not drive.





***Proximity to Transit Legend Description**

None = Minimal proximity to transit

Poor = "Other" bus route (1/4 mi); Bus routes 57, 60, 501, 502 or 504 (1/2 mi); Commuter Rail stop (1/2 mi)

Fair = Bus route 60 (1/4 mi); Express bus stop with connections (1/2 mi)

Good = Bus routes 57, 501, 502 or 504 (1/4 mi); Commuter Rail stop (1/4 mi); Green Line stop (1/2 mi)

Very Good = Express bus stop with connections (1/4 mi); Green Line stop with bus connections (1/2 mi)

Excellent = Green Line stop (1/4 mi)

Superior = Green Line stop with bus connections (1/4 mi)

Public or alternative means of transportation is necessary for many renters in Newton: 15.1 percent of renters did not have availability to a vehicle in 2000, compared to 3.0 percent of owners.¹⁰ Also according to the U.S. Census, 5,445 individuals or 12.3 percent of Newton's workers 16 and older use public transportation to get to work. That number has increased to 13.2 percent according to 2005 – 2007 American Community Survey estimates. Additionally, in 2000 racial minorities were less likely to have access to an automobile than the White population in Newton (about 1 percent).¹¹ Seven percent of Newton's ethnically Hispanic/Latino

¹⁰ U.S. Census. 2000.

¹¹ Census 2000 Summary File 3 (SF3) – Sample Data Tables: PCT65A-I

population in Newton did not have access to an automobile, compared to about 3 percent of Whites alone (Not Hispanic/Latino).¹²

In the *FY06-10 AI*, the Mayor’s Committee for People with Disabilities expressed concerns over the MBTA’s lack of accessibility for people with disabilities throughout the bus and train system. At that time, none of the T stations located in Newton were accessible. As of April 2006, the MBTA entered into a settlement agreement with the Boston Center for Independent Living (BCIL) in which the MBTA agreed to undertake major improvements to equipment, facilities and services that promise to enhance accessibility for people with disabilities in the letter and spirit of the Americans with Disabilities Act of 1991.¹³ The settlement agreement created the Department of System-Wide Accessibility to implement these changes.

Also in 2006, the entire MBTA bus fleet became fully accessible to persons with disabilities.¹⁴ An inventory of accessible features at MBTA train stations in Newton shows the presence of some accessibility features at three Green Line (light rail /subway) stations, but no accessible boarding features at each of the three Commuter Rail lines.

Table 3. Accessible features at Newton MBTA Stations

Station and Line	Accessibility Features
Riverside (Green Line)	Ramp, mobile lift; ADA Complaint station
Woodland (Green Line)	Mobile lift; ADA Compliant station
Waban (Green Line)	No accessibility boarding features
Eliot (Green Line)	No accessibility boarding features
Newton Highlands (Green Line)	Mobile lift
Newton Centre (Green Line)	Ramp, mobile lift, mini-highs; ADA compliant station
Boston College (Green Line)	Mini-high; ADA Complaint station
Chestnut Hill (Green Line)	No accessible boarding features
Newtonville (Commuter Rail)	No accessible boarding features
West Newton (Commuter Rail)	No accessible boarding features
Auburndale (Commuter Rail)	No accessible boarding features

Source: www.mbta.com, 2010

Although not in the MBTA’s program, access improvements to some Newton stations are still planned. A \$360,000 grant has been earmarked in the state’s budget to fund the development of plans to redesign the Auburndale station. In the past, the City of Newton has met with the MBTA to discuss the MBTA’s Capital Improvement Plan, which resulted in the Newton Highlands station being upgraded to be ADA compliant. Despite these efforts, the Mayor’s Committee for People with Disabilities believes the City of Newton should take a more active

¹² Census 2000 Summary File 3 (SF3) – Sample Data Tables: PCT65A-I

¹³ C.A. No. 02 CV 11504 MEL, Preamble. April 10, 2006

¹⁴ MBTA.com

role in advocating for changes to the MBTA stations and maintenance of existing accessible facilities.

F. BUILDING CODES AND ARCHITECTURAL ACCESSIBILITY

Part of a community's responsibility of affirmatively furthering fair housing is ensuring that all residential developments meet state and federal accessibility statutes, regulations and codes. The 2000 Census reported that 3,394 people with physical disabilities, age 16 and over, live in the City of Newton, representing four percent of the City's population. Recent estimates show this population is increasing.

For the purposes of this analysis, the terms "access" and "accessibility" refer to the condition of one's physical environment that permits relatively safe and unrestricted use by people with disabilities. In general, the test for accessibility is whether or not a condition is in conformity with the guidelines of the Americans with Disabilities Act (Public Law 101-336) and the regulations of the Massachusetts Architectural Access Board (521 CMR). For instance, an accessible housing unit is one that is usable by one or more persons with a physical disability and which conforms to the regulations derived from both the state and federal laws.

The City of Newton follows the Massachusetts State Building Code 7th Edition which mirrors the national building code, the International Code Council (ICC), and incorporates the provisions of the American National Standards Institute A117.1. State code requires new and rehabilitated commercial and multi-family residential developments to meet accessibility standards. In multi-family residential developments interior and exterior entryways, corridors, common areas and access from street and parking areas must meet accessible standards. The Mayor's Committee for People with Disabilities would like to see the City implement universal design guidelines and even become a leader in this field. Furthermore, all projects funded with CDBG and HOME funds must follow the appropriate accessibility program requirements.

Newton's Fair Housing Committee has identified the need for a comprehensive approach to strengthen and assure compliance with local, state and federal civil rights and anti-discrimination laws and regulations involving accessibility, as certain deficiencies identified in the City of Newton's *ADA Transition Plan* (1991) still exist and anecdotal instances have been reported on accessibility noncompliance issues in residential developments. These laws and regulations include: Title VIII of the Civil Rights Act of 1968, as amended, (Fair Housing Act); Section 504 of the Rehabilitation Act of 1973 (Sec. 504); Title II and III of the Americans with Disabilities Act of 1990 and its regulations (ADA); and the Architectural Access Board Rules and Regulations at CMR 521 (AAB). The need to improve the system is identified in the *Fair Housing Action Plan* and in the conclusions section of this analysis.

Architectural Access Consultant

In early 2010, the Fair Housing Committee, together with Division staff and the Executive Office, created and distributed a Request For Proposals for hiring an architectural access consultant to perform a system-wide examination of all applicable architectural accessibility processes, policies, guidelines, and staffing responsibilities within the City. The consultant will assist in

creating a comprehensive plan and consistent procedural standards, training, technical assistance and other actions as may be required to ensure that an integrated system is created and full compliance is met at both the state and federal levels. A more efficient and effective system will enhance the ability to fix identified current deficiencies and prevent future errors.

Arch. Access Checklist and Best Practices Policy for Housing Development Projects

Division staff has consulted with local experts in state and federal fair housing laws and regulations to develop a process that integrates architectural access compliance requirements when reviewing proposed CDBG and HOME-funded housing development projects for compliance with access regulations. As part of this process, a comprehensive scoping checklist will ensure that assisted housing projects meet all applicable state and federal architectural access laws and regulations including: Uniform Federal Accessibility Standards (UFAS); Massachusetts Architectural Access Board (CMR 521); Federal Fair Housing Act; Section 504 of the Rehabilitation Act of 1973; Title II of the American Disabilities Act and all relevant Presidential Executive Orders.¹⁵

Both the Fair Housing Committee and the Newton Housing Partnership will not only work with the Division to institute this measure in the City's housing programs, but also to develop an accessibility policy that exceeds federal and state architectural accessibility compliance requirements for housing. This policy, if approved, will increase the amount of accessible units beyond both federal and state requirements in projects that utilize CDBG and/or HOME funds.

The Mayors Committee for People with Disabilities also continues to advocate for architectural accessibility in housing across the City. In 2008, the City's Inspectional Services Department and the Mayor's Committee for People with Disabilities co-hosted a training entitled "AAB: Who is responsible for interpretation and enforcement?" The training included information on the AAB's jurisdiction, variances, the complaint and advisory opinion process, case studies, and the differences between the AAB and the ADA. At focus groups as part of this analysis, the MCPD also expressed the importance of having developers commit to integrating accessible features in their developments along with documenting compliance of said features.

G. VISITABILITY IN HOUSING

Visitability allows mobility-impaired residents to visit families and friends where it would not otherwise be possible. A visitable home also serves persons without disabilities (for example, a mother pushing a stroller, a person delivering large appliances, a person using a walker, etc.). One difference between "visitability" and "accessibility" is that accessibility requires that all features of a dwelling unit be accessible for mobility impaired persons, whereas a visitable home does not.

Three architectural conditions usually distinguish a visitable home: (1) at least one entrance is at grade (no step), approached by an accessible route, such as a sidewalk; (2) that entrance door

¹⁵ Executive Orders include 12898, 13166 and 13217

and all interior doors on the first floor are at least 34 inches wide, offering 32 inches of clear passage space; and (3) at least one half-bath is on the main floor.

Although the City does not have a written visitability policy, it follows the Massachusetts State Building Code regarding accessibility requirements, many of which relate to visitability. Although HUD does not establish visitability requirements, it strongly encourages that accessible design and construction features, in addition to those that are required, be incorporated into all housing developed with HOME funds.

Nothing found in this analysis explicitly points toward housing visitability issues in Newton, although data on visitable units is scarce. However, visibility should be a component of the analysis and development of a comprehensive system for reviewing, approving and monitoring residential developments for compliance with state and federal access requirements. Feedback suggested that the City should determine the feasibility of adopting local visitability requirements, including whether it is within the City's legal jurisdiction to do so without intruding on the jurisdiction of the State Building Code.

H. PUBLIC HOUSING AUTHORITY: UNIT OCCUPANCY AND WAITLIST DEMOGRAPHICS; TENANT SELECTION PROCEDURES

The Newton Housing Authority (NHA) has been the principal source of subsidized housing in the City since 1959, owning and managing 650 units, or about 30 percent of all subsidized housing in Newton. The Housing Authority manages both federal and state subsidy programs that provide housing to individuals and families whose annual household income does not exceed 50 percent of Area Median Income (AMI), and many times is much lower. The agency also administers the federal Section 8 Housing Choice Voucher Program that enables individuals and families to live in privately-owned and managed units.

Residents have the opportunity to become involved in the operation and management of the Housing Authority in two specific ways: 1) under the direction of the Resident Services Coordinator, a position funded with CDBG public service funds, residents at each development meet on a monthly basis to discuss specific needs and ongoing programming to develop programs that enrich the residents' quality of life. The tenant organization meetings enable residents to discuss any issues that arise at a development, as well as help identify any gaps in the existing services and/or programs. 2) *Housing Authority-M.G.L. c. 121B, sec.5* requires that one of the four Mayoral appointments to the Housing Authority's governing Board of Commissioners be a tenant who lives in a building owned and operated by, or on behalf of the Newton Housing Authority. The resident appointee attends the monthly Board of Commissioners' meetings and currently acts as a designated signatory for Housing Authority checks.

Section 8 Housing Choice Voucher Program

The Section 8 Voucher Program helps over 70,000 families, elders, and people with disabilities in Massachusetts. However, the level of appropriations and the fixed funding policy enacted by Congress in the 2005 Consolidated Appropriations Act (P.L. 108-447), resulted in some PHAs receiving less funds from HUD than they needed to meet the costs of the current number of

authorized vouchers in use. As of January 2010, the Housing Authority administered Section 8 vouchers to 442 households, half of which are located within the City and the remaining half located in the surrounding area. A portion of Section 8 vouchers are dedicated to survivors of domestic violence and SRO units for single homeless men at the Newton YMCA. According to Jonathan Hacker, Executive Director of the NHA, limited voucher availability continues to be an issue in 2010 as the number of available vouchers has remained at the same level as 2005.

New NHA clients undergo an extensive briefing on the Section 8 Program, which includes providing clients with informational packets on fair housing rights, filing discrimination complaints, and contact information for the Newton Human Rights Commission, MCAD and HUD. The NHA reported that they do not usually hear about the specificity of complaints as clients are directed to contact the organizations named above. The NHA also provides information on program policies, terms of vouchers, portability procedures, locating an apartment and lead-based paint information to its clients during consultation.

In the *FY06-10 AI*, the MCPD reported that landlords were often reluctant to rent to people with Section 8 vouchers, which is against Massachusetts Fair Housing Law (refusal to rent based on source of income), particularly in light of cuts to the program and the perceptions associated with the Section 8 program and voucher holders. MCPD members cited the lack of understanding and awareness by landlords of the program and fair housing laws, the lack of funding availability for accessibility improvements or funding resources to do so, and lack of knowledge of the reasonable accommodation process for people with disabilities. This anecdotal indication of these types of discrimination has since been confirmed by documented evidence in the Audits of the Newton housing market.

Waiting lists

The NHA is currently experiencing a high demand for both HUD- and State-sponsored housing units and Section 8 vouchers. As of February 2010, the total number of households on program waitlists was 1,800. Due to the high demand and subsequent length of the waiting list for Section 8 vouchers, the application process is currently closed. The HUD-sponsored units for seniors, people with disabilities or income-eligible individuals have a three to five year waiting list. Waits for entry into State-sponsored senior and disabled units are estimated to be three to five years, while waits for the approximately 90 family housing units are seven to ten years.

According to the Executive Director, once the Federal Section 8 voucher wait list is exhausted the NHA will be transitioning to the Massachusetts NAHRO (National Association of Housing and Redevelopment Officials) Centralized Section 8 Waiting List. Eighty-one Massachusetts housing authorities already utilize this computerized list which is updated every two years. All applicant information entered onto this list can be accessed and updated by all participating housing authorities and applications are always accepted. Additionally, the NHA has a wait list for people with mobility impairments. While outreach is generally broad when a unit becomes available, if an accessible unit becomes vacant the NHA conducts targeted outreach (e.g. to the veteran population).

The highest representation of households on the federal and state program waitlists are between the ages of 22 and 39, at about 38 percent, followed by those 60 years of age or older, at about 25 percent. Roughly 74 percent on the waitlists are female and about 15 percent have a mobility disability. With respect to racial diversity, 48 percent of households describe themselves as White, 18 percent as Black/African American, and 9 percent as Asian. Less than one percent described themselves as American Indian or Hawaiian. Moreover, 10 percent of households on the waiting lists described themselves as being of Hispanic/Latino origin. Additionally, 81 percent of applicants are not current Newton residents. Lastly, less than one percent of applicants are veterans.

Metrolist

The Metropolitan Housing Opportunity Clearing Center operates a centralized listing service that provides information on rentals and sales throughout the metropolitan area. The program, implemented under a consent decree, provides inner-city people of color with opportunities to move throughout greater Boston. Under the terms of the consent decree, owners of government-assisted housing throughout Boston and its suburbs are required to list new or recently vacated units with the Center.

Owners of buildings receiving tax credits are also required to list vacancies and are asked to complete a yearly survey. Listing forms ask about waiting lists according to unit size, so consumers know whether a vacant unit is currently available or whether they need to join the list. Private owners are encouraged to list units as well. Area public housing authorities must inform the Center when they open and close waiting lists and must provide copies of their tenant selection plans and sample application forms. This program also includes ancillary services to make the program workable. Services include vacancy listings, housing counseling, transportation, and escort services.

Mass Access Housing Registry

Citizens' Housing and Planning Association (CHAPA) operates the Massachusetts Accessible Housing Registry (MassAccess). Mass Access is a website that helps people with disabilities find affordable and accessible housing units throughout Massachusetts. The site follows specific Commonwealth Web Accessibility Standards, designed to meet the needs of users with disabilities. The website also allows owners and property managers to manage and publish their listings. The Department of Housing and Community Development requires that every Chapter 40B project utilize MassAccess when an accessible or affordable unit becomes available.

When assisting households on the waitlist in finding a unit, the NHA often suggests Craigslist or Metropolitan Boston Housing Partnership's rental clearinghouse website. There was no indication that the NHA referred clients to Mass Access or to Metrolist.

Current Occupancy

Over the past 20 years, the Newton Housing Authority has observed a trend in the demographics of its client population toward special populations including the elderly and individuals with physical and/or developmental disabilities. Due in part to the deinstitutionalization of people with mental illness and other disabilities in the 1980s and an aging population, the number of NHA residents with mental illness who are residing in elderly

housing developments has increased. In response, the NHA has continuous on-site support services including its Resident Services Outreach Program to enable residents to maintain their independence in their apartments. Springwell, a nonprofit organization and the state Massachusetts Rehabilitation Commission (MRC) both provide supportive services to Housing Authority residents. However, many elderly residents throughout the region continue to face difficulty in housing choice. The NHA has found that many elderly applicants are often cash poor but asset-rich and thus are not eligible for assistance through the NHA's programs.

As of February 2010, of the 442 households occupying state and federal public housing units 18 percent described themselves as a minority. About twenty-seven percent (26.9%) of households living in occupied units have a mobility disability and 60 percent of households were at least 60 years old. Comparing the 2010 occupancy demographics with 2008 data, where 445 units were occupied across all programs, little proportional change is evident.

Table 4. Occupant Demographics in Newton Housing Authority Federal and State Programs: 2008 and 2010 Comparison					
Demographic Category	2008	%	2010	%	% difference
Asian	38	8.54%	35	8.52%	-0.02%
Black	35	7.87%	32	7.79%	-0.08%
Hispanic/Latino	25	5.62%	23	5.60%	-0.02%
American Indian	1	0.22%	0	0.00%	-0.22%
Multi racial	3	0.67%	3	0.73%	0.06%
Total Minority	99	22.25%	90	21.90%	-0.35%
Mobility Disability	120	26.97%	105	25.55%	-1.42%
Under 60	147	33.03%	139	33.82%	0.79%
Over 60	298	66.97%	272	66.18%	-0.79%

Source: Newton Housing Authority: 2010, 2008

However, an analysis of unit occupancy of federal program units alone showed an increase in occupancy of minority and persons with a disability households from 2007 to 2010. In February 2010, 12 percent of the households occupying Federal Public Housing developments owned by NHA were minority households, compared to about nine percent (9.3%) in January 2007.¹⁶ Also in 2010, non-elderly residents with a disability made up about thirty-one percent (30.6%) of households, compared to about twenty-two percent (21.7%) in January of 2007.¹⁷

The NHA is also receiving an uptick in hoarding cases, which are difficult to predict, manage, and prevent. Hoarding is a sensitive issue that also has fair housing implications, especially regarding persons with disabilities and reasonable accommodations. When a hoarding case is identified, the Housing Authority works closely with the City's Hoarding Task Force which consists of the City's social worker, a psychiatrist, the Fire Department, The City's rehabilitation and construction specialist, and the NHA. Financial assistance to rehabilitate the property is

¹⁶ 2007 Federal Program data according to Newton Housing Authority. *Fair Housing Documentation Supporting Fair Housing Certifications*. 2008. Note: data on state programs not present in report.

¹⁷ Id.

available from the CDBG-funded Newton Housing Rehabilitation Program administered by the Housing and Community Development Division of the Planning and Development Department.

The NHA stated that they are able to handle current demand for fully accessible units, but that ongoing issues remain, including the lack of funds to make units fully accessible for clients who are aging in place and have begun to require unit modifications. The NHA can apply to the Newton Housing Rehabilitation Program to help offset the costs of accessibility improvements. According to the NHA, requests for reasonable accommodations are granted based on the receipt of a note of medical necessity.

Tenant Selection Preferences

The NHA maintains fair housing policies as part of their PHA plan, which is reviewed and approved by HUD annually. Fair housing policies and procedures are also included in the Newton Housing Authority administrative plan.

The Commonwealth of Massachusetts has selection regulations for its elderly housing, which restricts the non-elderly population to 13.5% of the units. In addition, there are additional preferences and priorities that deal with displacement, victims of abuse, fire/flood victims, health and sanitary issues. The NHA has two emergency-ready units; the only such units in Newton. These units are set aside for families of federally declared disasters who are section 8 voucher-holders or public housing residents in another jurisdiction. Most recently, the NHA housed victims of Hurricane Katrina. Some of these families still reside in units owned or managed by the NHA. The NHA has also reached out to HUD expressing its readiness to house displaced residents of Haiti, if necessary.

In 2005, the NHA staff and Board of Commissioners determined that “the existing tenant selection policy [for the Federal Public Housing and section 8 Voucher Program]...created with guidance from HUD...did not meet the needs of the local community.”¹⁸ The NHA staff and Board of Commissioners revised the tenant selection policy to include a third selection criterion that would be used when there were no local emergency preferences applicants on the waiting list.¹⁹ This third selection group consists of all standard applicants who are not residents or resident veterans. Aside from that change, this analysis has not identified any subsequent changes to the NHA’s Federal Public Housing and Section 8 Housing Choice Voucher Programs selection plans.

Upon review of the Assignment of Dwelling Units section of the NHA tenant selection plan, it should be noted that when assigning a unit, if a suitable unit existed in more than one location “... [the offer] shall be for the location which contains the largest number of vacancies, and facilitate deconcentration of very low-income families in any one public housing development, or [building] within a development.”²⁰ However, there was no mention of a process for deconcentration on the basis of race or ethnicity when two or more suitable units are assigned.

¹⁸ Newton Housing Authority. *Fair Housing Documentation Supporting Fair Housing Certifications*. 2008.

¹⁹ These preferences include: Involuntarily Displaced; Living in substandard housing; and Paying more than 50% of income for rent

²⁰ Newton Housing Authority. *Fair Housing Documentation Supporting Fair Housing Certifications*. 2008. Page 7

I. SALE OF SUBSIDIZED HOUSING AND POSSIBLE DISPLACEMENT

Approximately 17,000 units of affordable properties throughout the state are at-risk of having their term of affordability expire over the next three years because their use restrictions are terminating and owners have the option to convert them to market rate housing.²¹ In November 2009, the Patrick Administration passed legislation to preserve existing privately-owned affordable housing in Massachusetts. The legislation establishes notification provisions for tenants, a right of first refusal for the Massachusetts Department of Housing and Community Development (DHCD) or its designee to purchase publicly assisted housing, and modest protections for tenants of projects with affordability restrictions that terminate. In addition, a \$150 million loan fund created by the state quasi-public Community Economic Development Assistance Corp (CEDAC) will be available to purchase these properties so that they can remain affordable in the future.²²

DHCD provides the status of expiring use developments in each Massachusetts community. Their July 2009 report on Newton shows that 846 units in 22 developments have affordability restrictions that expire.²³ These units make up slightly more than one-third of Newton's subsidized housing inventory. The majority of these units are owned by nonprofit affordable housing organizations that are expected to renew their affordability restrictions.

Two developments, Peirce House, located at 88 Chestnut Street, and New Falls Apartments located at 2281 Washington Street, are owned and managed by for-profit entities. The developments have Section 8 project-base rental assistance for a total of 70 affordable units (New Falls has 41 units and Peirce House has 29 units).

The Section 8 contract for New Falls Apartments has been renewed annually since 2000 and in 2010 the City and New Falls came to an agreement to extend the use restriction until 2040. Other restrictions on the New Falls property, such as the Section 121A and Section 6A tax agreements and the requirements of the Urban Renewal Plan, extend to 2018.

Possible Displacement

With regard to programs using federal funds, the City of Newton has adopted a Residential Anti-Displacement and Relocation Assistance Plan in conjunction with the other HOME Consortium members. The relocation plan is described in further detail in Section 7 of this analysis.

²¹ Citizens Housing and Planning Association, January 2010

²² Id.

²³ Massachusetts Department of Housing and Community Development. *Projects with Subsidized Mortgages or HUD Project-based Rental Assistance*, July 2009.

J. PROPERTY TAX POLICIES

The tax rate for 2010 was set for Newton at \$10.41 per thousand of assessed value. As approved by state law, the Newton Board of Assessors administers tax assistance programs for various eligible taxpayers. These programs are geared to providing tax relief to many protected classes under State and Federal fair housing and Civil Rights laws, including income-eligible seniors (protected class: age), surviving spouses and children (protected class: familial status), veterans (protected class: military and veteran status / disability), and those homeowners who are blind, infirm, and experiencing an economic hardship (protected class: disability).

Additionally, the Newton Elderly and Disabled Taxation Aid Fund provides small grants to people who are elderly or have a disability with incomes at or below 80 percent of AMI who are having temporary financial hardships and problems paying their property taxes. Newton taxpayers who qualify for exemptions under clauses 17d, 18, 41C or 41A may also qualify for a discount of 30 percent off their water/sewer bills, depending on the water service. A description of the different tax assistance programs is available online at www.ci.newton.ma.us/assessor/index. Applications for exemptions must be filed each year and exemptions are granted on an annual basis.

Valuating housing with affordability restrictions

Statewide, the valuation of housing with affordability restrictions is unclear. To be considered affordable, housing units must have an affordability restriction recorded on the property. This restriction is meant to ensure that the property's resale price is limited to a price affordable upon resale to future income eligible households. In some cases, valuation at the fair market value may result in affordability issues for low-moderate income homeowners due to the higher property tax rate.

The *FY11-15 WestMetro HOME Consortium Consolidated Plan* has noted that a uniform approach to valuating units with affordability restrictions is needed, as there is currently no Massachusetts statute or regulation and very limited case law dealing with the issue of what constitutes property value when affordability restrictions exist. According to a letter from the Massachusetts Department of Revenue Division of Local services in 2006, the "trend among the Massachusetts courts appear to be to take affordable housing restrictions affecting the right to benefit from a property into account in assessing value,"²⁴ and furthermore that "...governmental policies or actions that regulate the return a property can produce and also promote important public interests are factors that must be taken into account in valuating the property," such as through an affordability restriction.²⁵

²⁴Kathleen Colleary, Chief of Bureau of Municipal Finance Law. Massachusetts Department of Revenue. Memorandum: "Affordable Housing Valuation." June 1, 2006. "*Affordable Housing Valuation Issues*." Kenneth Gurge. *City and Town*. A Publication of the Department of Revenue's Division of Local services. Vol. 19. No. 1 January 2006.

²⁵ Id. Also see *Board of Assessors v. Tammy Brook Company*, 368 Mass. 810 (1975) (in determining the fair cash value of the property it was appropriate to consider the Federal restrictions on the income that could be realized from the project); *Truehart, et al. v. Assessors of Montague*, Appellate Tax Board Docket Nos. 198055-57 (April 21, 1999) (proper valuation of single family homes purchased pursuant to a government program, which restricted the sale price, required the deed restrictions to be taken into account).

Perhaps the most relevant legal basis for considering the impact of affordability restrictions when valuing government sponsored units is Truehart, et al v. Board of Assessors of the Town of Montague (1999),²⁶ where the State’s Appellate Tax Board ruled that the restricted, below-market value of a unit is the value of the unit which should be used for real estate tax purposes.

The Newton Homebuyer Assistance Program offers assistance by subsidizing the gap between the fair market value of a property and what the first time homebuyer can afford through a traditional, affordable mortgage. The program utilizes a long term affordability restriction on properties purchased with its assistance. To determine if valuation was affected when an affordability restriction was placed on the property, tax assessments from 13 properties utilizing the Newton Homebuyer Assistance Program were examined from the fiscal year prior to the restriction and the fiscal year after the restriction was in effect. Although a preliminary analysis, Table 5 shows that 8 assessed values increased after the affordability restrictions were placed on the property, 4 decreased, and 1 remained the same.

Table 5. Assessed Values for Newton Properties with Affordability Restrictions

Property	Fair Market Purchase Price	Initial Price Basis under Restriction	Assessment in FY prior to restriction	Assessment in FY after restricted	Difference between FY Assessment
1	\$253,750	\$138,750	\$273,400	\$138,700	(\$134,700)
2	\$226,400	\$226,400	\$313,600	\$300,600	(\$13,000)
3	\$249,000	\$138,000	\$217,500	\$213,200	(\$4,300)
4	\$253,500	\$138,500	\$244,200	\$241,300	(\$2,900)
5	\$118,531	\$118,531	\$117,800	\$117,800	\$0
6	\$131,982	\$121,982	\$132,800	\$135,000	\$2,200
7	\$257,500	\$162,500	\$253,500	\$261,100	\$7,600
8	\$395,000	\$280,000	\$369,600	\$380,700	\$11,100
9	\$186,960	\$186,960	\$157,600	\$172,700	\$15,100
10	\$185,000	\$185,000	\$203,100	\$219,700	\$16,600
11	\$164,435	\$164,435	\$121,200	\$162,300	\$41,100
12	\$239,900	\$149,900	\$155,300	\$203,300	\$48,000
13	\$180,000	\$180,000	\$231,600	\$309,400	\$77,800

It is important to note that this analysis does not reveal any evidence that any discrimination or inaccurate valuation has or is occurring. However, it is integral that affordability be protected on these units. Future research is needed to determine if such properties reflect their affordable restricted value. Furthermore, clarity and guidance should come from the State’s Department of Revenue regarding the proper policy in valuating properties with affordability restrictions used for the public interest.

²⁶Carla Robinson. *Valuation and Taxation of Resale-restricted, Owner-Occupied Housing*. Lincoln Institute of Land Policy Working Paper. 2008.

K. BOARDS AND COMMITTEES RELEVANT TO FAIR HOUSING

The City of Newton has several boards that work together to oversee the review and approval of development projects, including affordable housing development, within the City. Furthermore, many advisory committees appointed by the Mayor provide important input from a variety of perspectives on issues facing the community and offer well-informed advice to staff and local officials. The following groups are instrumental in providing guidance in fair housing efforts in Newton, as they are at the crossroads of many fair housing related issues and initiatives:

- Newton Fair Housing Committee
- Planning and Development Board
- Zoning Board of Appeals
- Newton Housing Partnership
- Mayor's Committee for People with Disabilities
- Human Rights Commission
- Four target neighborhood advisory committees:
 - √ Newton Corner Advisory Committee
 - √ Newtonville Advisory Committee
 - √ Nonantum Advisory Committee
 - √ West Newton Advisory Committee

Newton Fair Housing Committee

Created by the Mayor in 2009, the Committee consists of 11 Mayoral appointed members. Currently, there are 10 active members on the Committee. Members are residents of the city or representatives of City based institutions, organizations, and businesses that serve the housing needs of Newton residents, and are persons interested in promoting the Committee's mission. Division staff works closely with the Fair Housing Committee, whose mission is to:

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

The membership structure is meant to reflect the diversity of persons who are protected by civil rights laws. Three of the current members are drawn from the Newton Housing Partnership, Newton Human Rights Commission, and Mayor's Committee for People with Disabilities. The FHC currently consists of seven women and four men. Professional representation includes fair housing and civil rights attorneys, real estate agents, lenders, and an affordable housing developer and property manager. The role of the FHC encompasses fair housing in many areas, including:

- Promoting, educating and advocating for fair housing in the community;
- Assisting in and advising the coordination of the fair housing- related activities of key City boards and departments (such as the Newton Housing Partnership, the Newton Housing Authority, the Community Preservation Committee, the Planning and Development Board, the Planning and Development Department and the Inspectional Services Department) so that City housing activities are carried out with a consistent civil rights focus;

- Reviewing and commenting on the City's *Consolidated Annual Performance and Evaluation Report* (CAPER);
- Evaluating and recommending means towards accomplishing 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;
- Assisting and advising the City in meeting its obligations under the City's Analysis of Impediments to Fair Housing Choice and accomplishing its fair housing planning objectives (including implementing the *Fair Housing Action Plan*);
- Assisting and advising the City to help assure that fair housing objectives are identified and integrated across City departments;
- Assisting and advising the City in seeking financial resources and establishing outside partnerships to further fair housing objectives; and
- Linking the work of the City to regional fair housing activities

Planning and Development Board

The Newton Planning and Development Board has many roles, including serving as the Community Development Board, the Planning Board, the Board of Survey and as an advisory board to the Newton Community Development Authority (NCDA).

Acting as the Community Development Board, the Planning and Development Board is the citizen body that considers the recommendations made by the citizen advisory committees, other Newton agencies and organizations and citizens related to the CDBG, HOME and ESG Programs, and after a public hearing to allow for open discussion, forwards recommendations to the Mayor for final review and approval. The Board presides over the public hearings on the five-year Consolidated Plan, the Annual Action Plan and the Consolidated Annual Performance Evaluation Report (CAPER).

The Planning and Development Board consists of five members who are residents of the City of Newton, appointed by the Mayor and confirmed by a majority vote of the Board of Aldermen. In addition, another member is appointed by the state Secretary of Housing and Community Development and another member is the Director of Planning and Development. There are also five alternate members so in the event that any member, except the state appointee or the director, is absent or unable to act for any reason, the chair designates an alternate member to act. There are presently nine full and alternate members of the Planning and Development Board. Despite not having any specific policies requiring a diverse representation of citizens in the community, the current Board remains fairly diverse with three women, one African-American male.

Zoning Board of Appeals

The Zoning Board of Appeals consists of five regular and five associate members that are appointed by the mayor and subject to confirmation by the Board of Aldermen. Members are pointed for a term of three years. Of the five regular board members, two are women. One associate member is female.

Newton Housing Partnership

In conjunction with the Planning and Development Department, the Newton Housing Partnership plays a key role in supporting land use, planning and fiscal policies and actions that ensure the development and preservation of housing to serve a socially and economically diverse community. The Partnership acts in an advisory capacity to the Mayor, the Board of Aldermen and its committees, the Planning and Development Board, the Zoning Board of Appeals, the Community Preservation Committee, and the City staff.

The Mayor appoints Partnership members for a renewable term, generally for three years. Currently, there are 12 active members on the Partnership board. Members are drawn from Newton residents interested in promoting the mission outlined above and include representatives of organizations, businesses and institutions which are based in Newton or which serve the housing needs of Newton residents. Current members include attorneys, lenders, an architect, housing development and planning consultants, and nonprofit housing managers and providers. Presently, there are eight males and four females on the Partnership. The nominating subcommittee is actively searching to fill the remaining vacancies to obtain a greater diversity in professional and demographic representation.

The Partnership examines and delivers comments on the following:

- Housing developments which individually require funding approval by the Planning and Development Board or the Community Preservation Committee.
- Other developments requiring individual approval by the Board of Aldermen or the Zoning Board of Appeals
- Creation of new programs for providing City-administered funding for affordable housing.
- Zoning amendment proposals containing provisions applicable to housing units at specified levels of affordability.
- Multi-year housing plans or plan amendments indicating City intent regarding affordable housing, such as the Housing element of the *Comprehensive Plan*, the *Consolidated Plan*, or the Housing section of the Community Preservation Committee's plan.

The Mayor's Committee for People with Disabilities

The Mayor's Committee for People with Disabilities (MCPD) is a City-wide committee of Newton residents appointed by the Mayor to promote accessibility in the City. Working closely with the Division, the Mayor's Committee for People with Disabilities makes recommendations to the Planning and Development Board concerning proposed CDBG-funded access improvement projects and other CDBG-funded construction projects. The committee also makes recommendations on access issues with other City departments. In FY10 (July 1, 2009 through June 30, 2010), \$131,000 was allocated from Newton's CDBG grant to projects that help meet this need.

Moreover, the MCPD works to promote adherence in Newton to the Americans with Disabilities Act (ADA) and the regulations of the Massachusetts Architectural Access Board. Through education and advocacy, the Committee raises community awareness about the importance of increasing accessibility and reviews access issues in public accommodations, municipal buildings and public facilities, parks, and playgrounds, along with providing advice to architects

and builders. The Mayors Committee for People with Disabilities consists of 10 members. A majority of the members are persons with disabilities. Six of the members are female and four are male.

Newton Human Rights Commission

In 1973, the City of Newton established the Newton Human Rights Commission and Advisory Council. The mission of the Human Rights Commission is to:

“See that each person regardless of race, color, religions creed, national origin, sex, age, disability, ancestry or sexual orientation, shall have equal opportunity in or access to employment, housing, education, and public services and licensing; to protect each person in the enjoyment of his or her civil rights; and to encourage and bring about mutual understanding and respect among all persons in the City by the elimination of unlawful discrimination.”

The nine Commissioners are appointed by the Mayor and approved by the Board of Alderman for a term of three years. The Advisory Council consists of 20 members, who are citizens of Newton and are appointed by the Mayor for two-year terms. Six of the Advisory Council members represent law enforcement, the school department, clergy, fair housing or other appropriate civil rights organizations, labor and real estate. The purview of the Human Rights Commission includes:

- Response to housing discrimination through a formal complaint process (discussed further in Section 6: Fair Housing Enforcement)
- Hate crime prevention, investigation and mediation
- Community outreach and education
- Meetings with City Leaders to identify issues of prejudice within the community
- No Place for Hate campaign
- Domestic violence programs
- Response to racist, homophobic, anti-Semitic and disability incidents
- Working with local law enforcement
- Community open forums
- Rallies and candlelight vigils
- Sexual harassment workshops with local businesses and colleges
- Ageism and health care programs

Neighborhood Advisory Committees

The City of Newton is committed to providing a system for full participation by City residents in the planning and implementation of its CDBG Program. Since a major emphasis of Newton's Community Development Program is to improve conditions in selected neighborhoods which meet certain federal and local criteria, it is appropriate that each of these Target Neighborhoods have a Neighborhood Advisory Committee (NAC) to provide an ongoing system for citizen participation.

The Neighborhood Advisory Committees advise and assist the Planning and Development Board and the Planning and Development Department in formulating the five-year *Consolidated Plan* and subsequent *Annual Action Plans*. NAC input is critical in identifying the needs in their neighborhoods and developing priorities, strategies and projects that address those needs. The committees also serve in an advisory capacity for the implementation of projects in their neighborhoods.

The size of the Neighborhood Advisory Committees should be large enough to allow for representation of the social and economic diversities of the neighborhood and to allow the Committee to function if some members are absent. Ideally, the City tries to have a minimum of 10 members on each Committee and a maximum membership of 15, with actual sizes determined by the appointing authority. The following guidelines apply in appointing members to each Committee:

- All appointed members shall reside within the designated target neighborhood, except for business owners who operate a business within the designated target neighborhood.
- At least three low- to moderate-income target neighborhood residents shall be appointed to each Committee. At least one of the three appointees shall be of low- income.
- At least one business owners, as defined above, shall be appointed to each Committee.
- At least one minority resident shall be appointed to each Committee.
- At least one resident with a disability shall be appointed to each Committee.
- At least one elderly resident shall be appointed to each Committee.
- The remaining Committee appointments shall consist of combinations of people from the above categories, as well as other General Target Neighborhood residents.

An analysis of these boards and committees does not indicate any discriminatory practices or impediments limiting fair housing choice. The City is continually dedicated to enhancing community involvement by announcing volunteer opportunities and filling committee vacancies with talented Newton residents from diverse professional and demographic backgrounds.

Ongoing fair housing education is recommended for these relevant boards, committees, and commissions because in order to institutionalize fair housing best practices within the City's existing structure, it is of utmost importance to educate those proximate to the process. The *Fair Housing Action Plan* makes further recommendations on how fair housing knowledge can be both institutionalized at a greater level within the City's boards, committees, and commissions.

5. Analysis of the Private Sector

A. LENDING POLICIES AND PRACTICES

Geographic Disparity

More than Money, a study in the series released by the Fair Housing Center of Greater Boston in collaboration with the Harvard Civil Rights Project entitled “*Toward Real Residential Choice in Segregated Metro Boston*,” debunks the common explanation that people of color simply cannot afford to buy homes in Boston’s suburbs. According to the report, racial and ethnic minorities tend to buy homes in urban and minority concentrated areas within the Metropolitan Boston Area. While approximately two-thirds of White homeowners live in outer suburbs of metro Boston, only 40 percent of Asians, 29 percent of Latinos, and 22 percent of African Americans do so.²⁶ What results is an under-representation of minorities in some communities that are geographically located near cities over-represented by minorities. For example, Whites (not Hispanic/Latino) constitute 92.1 percent of Westfield (near Holyoke and Springfield), 85.2 percent of Fitchburg-Leominster PMSA (near Worcester), 86.5 percent of Haverhill (near Lawrence), and 86.5 percent of Newton (near Boston).²⁷ Overall, the report found that:

- People of color can afford to purchase homes in many more communities than they do.
- While African-American and Latino homebuyers do face greater affordability constraints on average, affordability alone does a poor job in explaining segregation.
- Black/African-Americans and Latinos, who could afford to buy in a wide range of more outlying suburban communities, are concentrating in Boston, certain inner suburbs, and certain satellite cities, often the same places experiencing the largest declines in White homeowners.
- The concentrated residence and homebuying patterns in the Boston metro area are attributable to more than money.

In 2008, home-purchase lending²⁸ to Black/African American and Hispanic/Latino borrowers was highly concentrated in a small number of the state’s cities and towns. This includes just eight communities (including Springfield, Brockton, Worcester, and Boston) receiving over half of all lending to Latinos.²⁹ Newton was not one of these communities, with 34 home purchase loans originated to Black/African American borrowers and 49 to Hispanic/Latino borrowers, compared with 1,729 White borrowers from 2006 to 2008. This data suggests that an underrepresentation of minority borrowers exists in the Newton housing market.

²⁶ Harris, David J. and Nancy McArdle. *More than Money: The Spatial Mismatch Between Where Homeowners of Color in Metro Boston Can Afford to Live and Where They Actually Reside*. The Harvard Civil Rights Project. January 2004.

²⁷ Massachusetts Department of Housing and Community Development. *Analysis of Impediments to Fair Housing Access and Action Steps to Mitigate Impediments*. 2007.

²⁸ Includes prime, subprime and high-cost loans (HAL’s)

²⁹ *Id.*

Lending Disparity

Changing Patterns XVI: Mortgage Lending to Traditionally Underserved Borrowers & Neighborhoods in Boston, Greater Boston, and Massachusetts 2008, is a yearly study prepared for the Massachusetts Community and Banking Council (MCBC) by Jim Campen. The report analyzes HMDA data to examine loan applicants and loan denial ratios among minorities in communities that are part of the Metropolitan Area Planning Commission (MAPC)³⁰ as well as across the state. The report also focuses on fair access to *good* loans for traditionally underserved borrowers and neighborhoods by analyzing the ratios of higher-cost, less affordable loan products (or HALs) between traditionally underserved and White borrowers.³¹

Fair Access to Good Credit

In the Greater Boston area, Black/African American homebuyers were 3.1 times more likely and Hispanic/Latinos 2.5 times more likely to get a HAL than their white counterparts, while Black/African American and Hispanic/Latino homebuyers received just 3.4 percent and 4.1 percent of all prime loans, respectively.³² Of the 1,812 loans originated in Newton from 2006 to 2008, 55 were HALs. Five HAL loans were to Black/African American or Hispanic/Latino borrowers in this timeframe. The Newton data is contrary to the regional data where minority borrowers are receiving a disproportionately large share of HALs in the lending market. Overall, *Changing Patterns XVI* concluded that areas and populations that had previous difficulty getting any mortgage loans specifically became targeted for the higher-cost loans statewide, although the number has decreased in 2008 from other years.

Table 6. Distribution of all Owner-Occupied Loans Originated to Black, Latino and White Borrowers in Newton, 2006 - 2008

	Black Borrowers			Latino Borrowers			White Borrowers			HAL share Disparity Ratios	
	All Loans	HAL Loans	% HAL	All Loans	HAL Loans	% HAL	All Loans	HAL Loans	% HAL	Black/White	Latino/White
2008	7	0	0.0%	13	0	0.0%	473	8	1.7%	0.00	0.00
2007	17	2	11.8%	19	0	0.0%	595	15	2.5%	4.67	0.00
2006	10	0	0.0%	17	3	17.6%	661	27	4.1%	0.00	4.32
Total	34	2	n/a	49	3	n/a	1,729	50	n/a	n/a	n/a
Avg.	11.3	0.7	3.9%	16.3	1	5.9%	576	16.7	2.8%	1.56	1.44

Loan Denial Disparity

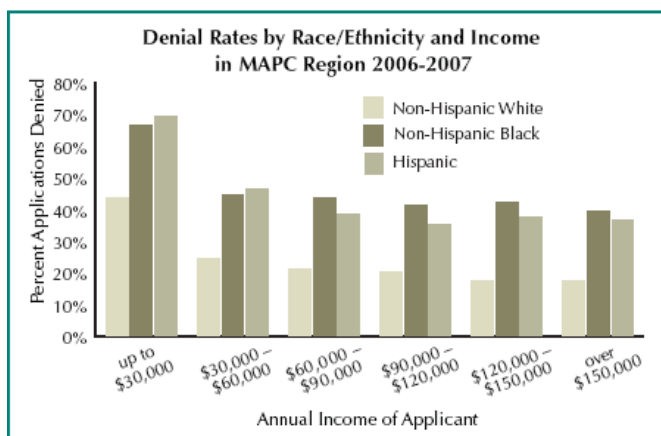
Changing Patterns XVI also examined loan applicants by ethnicity and loan denial ratios among minority and white borrowers. Of the 717 loan applications in Newton in 2008 for owner-occupied homes, one percent of the potential borrowers described themselves as Black/African American and about two percent (1.8 percent) as Hispanic/Latino. Sixty six percent (66 percent) of loan applications were from White borrowers.

³⁰ The MAPC consists of 101 cities and towns in the Greater Boston area, including Newton

³¹ HALs are identified as having annual percentage rates at least three percentage points higher than the current interest rate on long-term U.S. Treasury Bonds

³² Id.

Graph 1. Loan Denial Rates in the MAPC



According to the report, state-wide denial rates on mortgage loan applications by Black and Latinos were more than twice as high as the denial rates by White applicants. When applicants were compared based on income and denial rates, the denial rates for Blacks and Latinos “were in every case well above the denial rates for white applicants in the same income category.”³³ In fact, according to the report, the disparity tended to be even higher for applicants in higher income categories. Graph 1, above³⁴ shows that denial rates for Non-Hispanic Blacks and Hispanics/Latinos in the MAPC Region were significantly higher than Non-Hispanic White counterparts across all incomes.

It should be noted that denial rates for Black/African American and Hispanic/Latino applicants as a whole have fallen in Massachusetts since 1990, while denial rates for Asians and Whites increased during the same time period.

From 2006-08, the Black/White denial ratio in Newton averaged 0.84, which is lower than Newton’s 2000-03 average, which saw a denial ratio of 1.45. The 2006-08 Latino/White average denial ratio is 1.30, slightly higher than what was reported through 2000-03, which was 0.78.

Table 7. Prime Loan Denial Rates and Ratios by Race/Ethnicity in Newton, 2006-2008 ³⁵

	Applications				Denial Rate				Denial Rate Ratio		
	Asian	Black	Latino	White	Asian	Black	Latino	White	Asian/White	Black/White	Latino/White
2008	172	7	17	645	10%	0%	0%	8%	1.27	0.00	0.00
2007	140	20	30	753	4%	15%	10%	8%	0.60	2.51	1.67
2006	132	14	25	813	5%	0%	12%	5%	0.98	0.00	2.22
Avg.	148	14	24	737	6%	5%	7%	7%	0.95	0.84	1.30

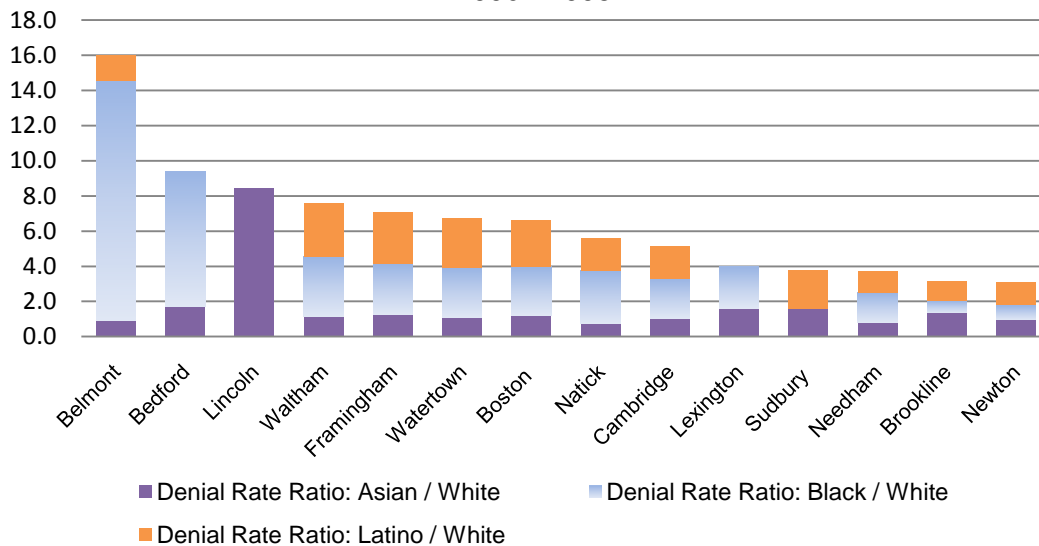
As Graph 2 shows, compared to select communities in the Greater Boston area Newton had the lowest aggregate average of loan denial ratios from 2006 to 2008 while Belmont had the largest. In the same time period, Belmont also had the highest average Black/White loan denial ratio (13.7), Lincoln had the highest average Asian/White loan denial ratio (8.4), and Waltham had the highest average Latino/White loan denial ratio (3.0).

³³ Jim Campen. *Changing Patterns XVI: Mortgage Lending to Traditionally Underserved Borrowers & Neighborhoods in Boston, Greater Boston, and Massachusetts 2008*.

³⁴ Metropolitan Area Planning Council Analysis, Home Mortgage Disclosure Act data, 2008.

³⁵ Jim Campen. *Changing Patterns XVI: Mortgage Lending to Traditionally Underserved Borrowers & Neighborhoods in Boston, Greater Boston, and Massachusetts 2008*. Table 42.

Graph 2. Aggregate Average of Loan Denial Rate Ratios for Select communities in the Greater Boston area, 2006 - 2008



This and previous *Changing Patterns* reports document evidence that continuing racial and ethnic disparities exists in mortgage lending in the Greater Boston area. The reports have concluded that mortgage lending disparities do exist between White and non-White mortgagees, and that these disparities go beyond affordability. The data here suggests that Newton has low racial and ethnic loan denial disparities and minority borrowers do have fair access to good credit. The data also suggests that there is an underrepresentation of minority borrowers in the Newton housing market, despite its proximity to the more racially diverse Boston.

Lending Institutions

Several private lenders in Newton provide financing for low- and moderate-income housing projects, allowing housing developers to leverage government funding with conventional loan products. Local lending institutions provide mortgages to housing developers that, in conjunction with CDBG and/or HOME funds, finance affordable housing development. Local lenders also serve on the Economic Development Advisory Committee that underwrites and recommends CDBG-funded loans to eligible applicants. Local lenders also serve on the Newton Fair Housing Committee and Newton Housing Partnership.

In addition, the Federal Home Loan Bank of Boston (FHLB) offers its member banks four options for funding affordable housing and economic development in the Boston area. The Affordable Housing Program (AHP) provides funds for homeownership and rental housing proposals that benefit very low- to moderate-income individuals and families. The Community Development Advance is a reduced-rate advance for funding eligible affordable housing, economic development and mixed-use initiatives. The New England Fund (NEF) provides advances to support housing and community development initiatives that serve moderate-income households and neighborhoods, while the Equity Builder Program offers members grants to provide income-eligible buyers with down payment, closing cost and rehabilitation

assistance, as well as offering matched savings programs. FHLB funds have been used in a number of housing development projects in Newton and have been critical to the success of the Division's housing development efforts.

B. REAL ESTATE POLICIES AND PRACTICES

Forty-two years after the Fair Housing Act was enacted, discrimination in the nation's housing market continues to exist. According to HUD's FY2008 Annual Report on Fair Housing³⁶ 10,552 housing discrimination complaints were filed with HUD and Fair Housing Assistance Programs (e.g. MCAD) in 2008, the highest amount of complaints filed in any fiscal year and the third year in a row that HUD and these programs received over 10,000 complaints. It is believed that as many as four million acts of housing discrimination occur nationwide each year.

The report also revealed that 44 percent of the housing discrimination complaints filed with HUD in 2008 contained allegations of discrimination based on disability, a figure which is increasing since FY2005. This figure was greater than the percentage of complaints filed in FY2008 on the basis of race (35 percent), familial status (16 percent), national origin (13 percent), gender (11 percent), retaliation (5 percent), religion (3 percent), and color (2 percent).³⁷

Regional testing by the Fair Housing Center of Greater Boston's completed from 2001 to 2005 also show that discrimination – not just affordability – accounts for the residential segregation patterns that exist in the Greater Boston area. These regional audits found that Black/African American and Latino/Hispanic home seekers experience discrimination in half of their attempts to rent, purchase, or finance homes in the region. The audits also found that families with children and households with Section 8 vouchers are discriminated against two thirds of the time.

Newton Testing Audits

In 2005, Newton contracted with the Fair Housing Center of Greater Boston to conduct a Fair Housing Audit in both the rental and for-sale markets. Newton was the first municipality to contract with the Fair Housing Center to test for discrimination in private rental- and for-sale real estate market. The Audit was conducted in late 2005 and early 2006. The Center published a report titled *Housing Discrimination Audit Report to the City of Newton* on March 31, 2006.³⁸

The City also contracted with the Disability Law Center to conduct a testing audit in 2006. 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. The full disability discrimination audit is included as Appendix B of the

³⁶ United States Department of Housing and Urban Development. *The State of Fair Housing. FY 2008 Annual Report on Fair Housing*. 2008.

³⁷ Id.

³⁸ The complete report is available in the Newton *Fair Housing Action Plan*, November 2008, located online at www.ci.newton.ma.us/fairhousing/

Fair Housing Action Plan. Both the FHCGB and DLC audits concluded that discrimination based on race, national origin, source of income, familial status, and disability is present in Newton's rental and for sale markets.

Concept of Fair Housing Testing

Testing is a controlled method of measuring and documenting discrimination. Testing covers information and services offered or given to home seekers by housing providers. According to the Fair Housing Center, a test is designed to reveal difference in treatment and to isolate the cause of that difference. While the tests conducted for the City were for research and recommendation purposes, testing is commonly used for self-compliance by the real estate industry, lending institutions and public entities. Additionally, case law has upheld the legitimacy of testing evidence in enforcement proceedings involving housing 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."³⁹

Testing at the Fair Housing Center of Greater Boston

The Fair Housing Center conducted testing with matched pairs of testers. Often, the tester who was a member of a protected class had better financial standing than their non-protected class counterparts (i.e. better credit score, higher income). The testers were volunteers and were trained to record interactions with a housing provider. Testers were not told what form of discrimination they were testing and a Fair Housing Center test coordinator supervised the work.

Summary of the Rental Market Audit

During the months of September and October 2005, the Fair Housing Center conducted 24 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 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%** Specifically, the testing found that:

- 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 involved Latino Americans and two cases involved 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 vouchers (33%)

³⁹ Fair Housing Center of Greater Boston. *Housing Discrimination Audit Report to the City of Newton*. March 2006. Page 2.

Summary of the For-sale Market Audit

In January and February 2006, the Fair Housing Center conducted 10 paired sales tests with real estate agencies listing properties for sale in Newton. The Fair Housing Center conducted testing for discrimination against African Americans and Latinos (race/national origin). Testers were assigned to contact real estate agents about specific properties on the market. Six pairs inquired about houses priced from \$700,000 to \$800,000 and four pairs inquired about condos for \$450,000 to \$500,000. **Overall, the Fair Housing Center found evidence of discrimination in 4 of the 10 tests conducted, or 40%.** Furthermore:

- Three tests 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
- Both tests that paired Latino and White homebuyers showed evidence of discrimination based on national origin (100%)
- One out of eight tests that paired African American and white homebuyers showed evidence of discrimination based on race (13%)
- In four out of these eight tests, the realtor offered more information to the White homebuyer compared to their Black/African American counterpart (50%)

Provision of services in a Real estate related transaction [424 sec. §3605 violation]

“In one test, 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 the white tester but did not do the same for the more qualified tester of color. Furthermore, the agent made a discouraging statement to the tester of color, saying the property was overpriced. The agent made no such comment to the white tester, instead promising that he would look out for the buyer’s best interest, including negotiating the price of the house.”

Access to Apartments [424 sec. §3604(d) violation]

“The most common discriminatory behavior was agents providing false information about the availability of apartments. In four instances, the control testers were told about more units, sometimes as many as 5 or 6 as their protected class counterpart...”

“In one instance, the protected class member was told that no apartments were 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.”

Testing at the Disability Law Center

The DLC testing audits matched pairs of testers (one tester with a disability, the other tester without) to test for differential treatment. In addition, the DLC utilized non-matched testers to investigate whether housing discrimination existed 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.”⁴⁰ The testers were volunteers and were trained to record interactions with a housing provider. A test coordinator supervised the work.

Summary of the Disability Law Center Audit

The Disability Law Center’s *Disability Discrimination Audit of the Housing Market of Newton, Massachusetts* revealed significant barriers to equal housing opportunities for individuals with disabilities across all disability categories. The testing concluded that compared to home seekers without disabilities, individuals with disabilities encountered “significant barriers to entry into the Newton housing market, especially in the private, non-subsidized rental market.”⁴¹

The audit found that the two most significant forms of discrimination faced by individuals with disabilities were in “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.”⁴²

Overall, evidence of discrimination was found in 25 of the 52 paired and unpaired tests conducted, or 48 percent. Specifically, the testing found that:

- Of seven 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 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 eight 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

⁴⁰ Disability Law Center. *Disability Discrimination Audit of the Housing Market of Newton, MA, Final Report*. January 2007.

⁴¹ Disability Law Center. *Disability Discrimination Audit of the Housing Market of Newton, MA, Final Report*. January 2007. Page 12

⁴² Disability Law Center. *Disability Discrimination Audit of the Housing Market of Newton, MA, Final Report*. January 2007. Page 13

Steering

“Both testers indicated that they were seeking apartments in Newton. The subject tester (person with a disability) was encouraged by the real estate agent to seek apartments in Waltham and Watertown. The control tester was not similarly steered toward those towns”

Testing for Reasonable Accommodation request: Waiver of no pet policy

“A tester, who is blind, stated to the agent that he had 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.”

Testing for Reasonable Modification

“The tester, who is deaf, viewed a unit in a building consisting 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.”

Unfortunately, documented evidence of discrimination against many of the protected classes exists in Newton as it does in the Greater Boston area and throughout the nation. Comparative analysis between local, regional, and national scales is fruitless, as any discrimination should not be tolerated. The intention here should not be to dwell on the results of these audits. Rather, these audits show the need to create and implement best practices in affirmatively furthering fair housing in both the private and public sectors. Overall, the Audits are a defining moment for Newton to actively and diligently seek to eradicate discrimination.

Every action identified in the *FY11-15 AI*, the *Fair Housing Action Plan* and the recommendations discussed in Fair Housing Center and Disability Law Center’s Testing Audits apply toward overcoming discrimination in the rental and for sale markets in Newton. More specifically, encouraging self-monitoring by the real estate industry and enforcement (see Section 6: Analysis of the Public and Private Sector), the actions connected to education, outreach and advocacy, and the related actions to overcome impediments in the Conclusions section of this analysis would be effective in overcoming this impediment.

6. Analysis of the Public and Private Sector

This section analyzes the interactions between the public and private sectors and identifies the efficacy and gaps found within fair housing enforcement, education, and outreach. This section also briefly discusses the importance of housing affordability and economic factors and their impacts as impediments to fair housing choice.

A. FAIR HOUSING ENFORCEMENT

If done in tandem, enforcement and educational measures can aggressively mitigate housing discrimination. As cited in the Fair Housing Center of Greater Boston's audit report to the City:

"Housing discrimination is under reported and therefore unaddressed. Thus larger patterns of community segregation remain unchanged, and [residents] interpret the lack of overt evidence of discrimination to mean that discrimination does not occur within their communities."

Enforcing anti-discrimination and fair housing laws is often overly complaint-driven. Relying solely on complaints and other inherently passive systems alone will not address fair housing issues. Both passive means of enforcement such as compliance, monitoring, and complaint systems, as well as more proactive and preventative measures such as informational programs, education, outreach, training, and advocacy, are needed to ensure that fair housing laws are institutionalized and adhered to in both the public and private sectors.

Formal Complaint Process

The Human Rights Commission Ordinance and the Commission's "Rules of Procedure for Complaint of Unlawful Practices" have been revised and updated to fully and explicitly cover housing discrimination complaints. With assistance from a member of the Human Rights Commission, staff from the Newton Health and Human Services and Planning and Development Departments has developed a fair housing complaint intake process for the City.

Key personnel have been identified and trained and a procedure for handling housing discrimination complaints has been developed along with the necessary forms. Information on how to file a complaint and the complaint process is posted on the City of Newton's Fair Housing web site.⁴³ The revised Human Rights Commission Ordinance, the "Rules of Procedure for Complaint of Unlawful Practices," the Discrimination Complaint Form, and the Intake Form are included as appendices of this analysis.

Findings or violations of the Fair Housing Act, Title VI, or Section 504

See "Evaluation of Jurisdictions Current Fair Housing Legal Status"

Compliance and Monitoring

The Fair Housing Center of Greater Boston, The Disability Law Center and the *Fair Housing Action Plan* recommendations all include the need for ongoing monitoring, consistent fair housing data collection on market rate and subsidized housing units, and occasional investigative testing to improve and expand fair housing practices in both the public and private

⁴³ <http://www.newtonma.gov/fairhousing/complaint.htm>

sectors. Limited personnel and financial resources make it difficult to conduct these efforts in a consistent, structured and efficient manner. However, if discrete methodologies are developed and time and financial resources devoted, the result will be an improved knowledge about specific fair housing trends and gaps within the City at any given time. Resources can then target these specific issues, trends, or gaps.

Currently, a paucity of fair housing related data collection exists on the City's market rate and subsidized housing units including the number and location of accessible units. Increased data collection will be valuable for public officials, staff and the community alike. For example, the shifting patterns in the supply and demand of accessible units can easily be identified. The data could also be utilized to discern the status of available accessible units and the rate at which requests for reasonable accommodations or reasonable modifications for non-accessible units are made, granted, or denied.

In discussion with stakeholders, this analysis has also found that there is inconsistent notification of available accessible/affordable housing units in Newton on websites or other public clearinghouses such as MassAccess, MetroList, and MassAffordableHomes.org.⁴⁴ All owners, managers and housing authorities with accessible apartments are required to register accessible units with the Mass Access Clearinghouse. Furthermore, the Disability Law Center's audit recommends that the City should "consider completion of a comprehensive survey and creation of a searchable database of accessible units in Newton."⁴⁵ Housing staff are considering how to determine if property managers, owners, and housing authorities are registering available accessible apartments on the appropriate websites. One suggestion is to incorporate this question into annual monitoring by the City.

The Fair Housing Committee and Division staff have agreed that fair housing testing is not at the forefront of their efforts at the current time, particularly in light of the recent testing audits conducted by the FHCGB and DLC and their high cost. Instead, the committee has decided to focus for the present on the need for information, education and outreach. Future periodic and targeted testing will serve as both a comparative and point-in-time analysis in determining who is conducting discriminatory acts, the type of discrimination that is occurring and the overall prevalence of such acts, as well as providing information about previously untested activities.

B. INFORMATIONAL PROGRAMS, EDUCATION, OUTREACH AND ADVOCACY

Comprehensive and audience-specific education and outreach is an overarching principle of the *Fair Housing Action Plan*, which states that "fair housing knowledge is imperative to create a fair housing ethic in all public and private housing transactions."⁴⁶ The Audit results necessitate increased and sustained education, outreach and informational programs for systemic change

⁴⁴ MassAffordableHomes.org is a listing of affordable home lotteries and affordable home re-sales throughout the State of Massachusetts. Published as a community service by the non-profit [Massachusetts Affordable Housing Alliance \(MAHA\)](#), the site is designed to help low- to moderate-income homebuyers find a home they can afford, and educate them about the lottery and home buying process.

⁴⁵ Disability Law Center. *Disability Discrimination Audit of the Housing Market of Newton, Massachusetts*. January 2007. Page 28.

⁴⁶ Newton Fair Housing Task Force. *Fair Housing Action Plan*. November 2008. Page 7.

to occur. As part of this analysis, many community members and key stakeholders stated that a fair housing education and empowerment gap exists in the City. This raises the following questions when conducting future outreach and education efforts:

- Are current systems and resources being utilized?
- How can current resources be expanded to reach a broader audience?
- What educational barriers exist? Why? How can these barriers be overcome?
- What populations are not currently exposed to fair housing education?
- How can outreach and educational efforts be better targeted to such audiences?

Despite the efforts that resulted from the FHIP grant, this analysis finds that not all consumers, producers, and providers of housing are knowledgeable or are utilizing the resources and protocols necessary to become empowered and comply with applicable fair housing processes and laws.

Housing Consumers (or homeseekers)

A knowledge and therefore empowerment gap continues to exist not only in Newton, but in the Greater Boston area.⁴⁷ This gap affects both residents and prospective residents of Newton. Misunderstandings about available housing opportunities pervade, especially within low-income communities predominantly composed of people of color or recent immigrants. In addition, studies have shown that such populations are less likely to perceive that they will be approved for a mortgage or will be eligible to purchase a home, even with appropriate income levels and credit and employment histories. Simply put, some feel that they do not “belong.”

The Massachusetts Institute for a New Commonwealth and the Center for Labor Market report (2005) indicated that foreign immigration status and linguistic isolation has a substantial effect on residential patterns as well as education and income. This information is consistent with DHCD’s analysis that there is a lower rate of housing permanence among minorities across the state, especially amongst Hispanic/Latinos.⁴⁸ The same is true for Newton households. According to Census 2006-2008 data estimates for Newton, approximately 23 percent of Hispanic/Latino households in Newton had moved within the same county over the span of one year, compared to about seven percent of Whites (alone) and about five percent for Black/African American households.⁴⁹

Feedback from a key stakeholder in the Latino community echoed these conclusions, reporting that many parents and first and second generation members of the Latino community are illiterate, have limited education and English language skills, and that Latino families often have a high rate of unit turnover within the City. Because of these factors, it is difficult for these members of the community to become knowledgeable about the housing market.

Limited knowledge coupled with lower housing permanence makes it difficult for the Latino population in Newton to find a unified voice in the community to built solidarity around issues

⁴⁷ Massachusetts Department of Housing and Community Development. *Analysis of Impediments to Fair Housing Access and Action Steps to Mitigate Impediments*. 2007.

⁴⁸ Id.

⁴⁹ 2006-2008 American Community Survey 3-Year Estimates. Tables: B07004A, B07004B, B07004I

such as discrimination. The liaison stated that because of these realities, potential victims of housing discrimination do not know where to turn within their own community, nor are many empowered with the knowledge of fair housing laws.

The challenges faced by some members of the Latino community serve as an example of what occurs when any homeseeker is not knowledgeable or empowered about their fair housing rights. Other feedback suggested that potential victims of housing discrimination, regardless of the protected class, may avoid pursuing action by filing a complaint out of fear of repercussion because of fair housing law misconceptions, lack of fair housing knowledge, or simply due to the emotional and time investment involved. These reasons all call for the need for increased education and outreach.

Overall, feedback with community members made it explicitly clear that lack of education about fair housing rights and laws presents a significant impediment to fair housing choice in Newton. Lack of education is pervasive and difficulties remain in consistently empowering consumers.

Producers and Providers of Housing

Based on the results of the fair housing audit testing and anecdotal evidence from community stakeholders, confusion and lack of education on fair housing laws also exists for producers and providers of housing.⁵⁰ For example, in one test conducted in Newton by the FHCGB, a real estate agent said he would get back to the tester after checking whether the owner would accept a Section 8 housing voucher. If the agent was abiding by the owner's discriminatory preference to refuse Section 8, this would violate the law. Beyond the documented tests, further anecdotal evidence suggests that landlords of one-to-four unit properties have refused to rent to families with children because of the presence of lead paint. This violates both federal and state fair housing laws and the Massachusetts Lead Paint Law.⁵¹

Feedback suggested that education should primarily focus on private landlords of small properties (one-to-four units), especially regarding the most prevalent issues of not accepting households with section 8 vouchers and lead paint-related issues. It was suggested that other targeted audiences such as the Newton Housing Authority, real estate brokers and salespersons along with non- and for-profit developers should not be precluded from education. Many community members and key stakeholders agreed that incentive and enforcement strategies must be developed in order to ensure that private landlords of all sizes comply with fair housing laws, although there was some disagreement between actual strategies that would generate the best results.

⁵⁰ Producers and providers include, but are not limited to: non- and for-profit property managers, private landlords, and real estate brokers

⁵¹ M.G.L. Chapter 111, section 197A (d).

Local Government and Private Sector

“...City officials must continue...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.”

– Recommendation from Housing Discrimination Report to the City of Newton⁵²

As discussed in earlier sections of this analysis, it is clear that fair housing education and training needs to be consistently applied in the public and private sectors. Fair housing education and training must occur on a consistent basis for those with the ability to affect local housing policy, such as City staff, public officials and decision makers and boards and committees. Additionally, public and private housing providers should become aware of new fair housing issues and new developments as they arise (i.e. best practices, new case law, state or federal regulations).

Leadership is necessary in addressing housing discrimination to integrate fair housing principles into municipal requirements, programs and policies, as well as advocating on a community-wide level. Moreover, the public and private sectors must work together to achieve a spirit of cooperation and collaboration between all housing elements in the City.⁵³

Newton became extremely proactive in its outreach and education when housing staff and the then Fair Housing Task Force received and implemented the Fair Housing Initiatives Program grant in 2007 and 2008. While the program was very successful, education and outreach must be sustained in order to change discriminatory practices and attitudes.

C. HOUSING AFFORDABILITY AND ECONOMIC FACTORS

Housing affordability and associated economic factors have considerable impact on equal access to housing opportunity in Newton as well as Greater Boston. Lack of affordability can create impediments to housing choice for some members of protected classes. The median sale price of a Newton home was \$760,000 in 2008.⁵⁴ However, a household of four people earning \$85,800, the 2008 Area Median Income, could afford a single family home priced at \$288,450.⁵⁵ Housing affordability issues, needs, and strategies are discussed in greater detail in the *FY11-15 WestMetro HOME Consortium Consolidated Plan* and Appendix A of this analysis. The impediments identified below are to varying levels of extent a function of Newton’s housing market and economic factors. These impediments include:

- 1. High cost of housing, high development costs, land acquisition and lack of available land for new development limits opportunities, diverse siting of affordable housing, and housing choice**

⁵² Fair Housing Center of Greater Boston. *Housing Discrimination Audit Report to the City of Newton*. March 2006. Page 12

⁵³ Newton Housing Task Force. *Fair Housing Action Plan*. November 2008.

⁵⁴ *WestMetro Home Consortium FY11-15 Consolidated Plan*

⁵⁵ See Appendix A for more information on housing affordability

- 2. The inability of the City to act quickly in a highly competitive real-estate market makes it challenging to create or preserve affordable and/or accessible housing**
- 3. The overall shortage of affordable and accessible rental units and extremely low vacancy rates of these units throughout the City of Newton**
- 4. The age of housing stock coupled with the existence of lead paint hazards and limited financial resources for landlords to abate lead paint limits housing choices for families with young children**
- 5. Although reusing existing stock is promoted, the age and type of existing housing stock makes it difficult to rehabilitate units to become fully accessible units in a cost effective manner**
- 6. The high costs of housing in the City of Newton can restrict low-and moderate-income families from purchasing or renting housing units, especially detached single family homes.**

It is the goal of the Housing and Community Development Division to maximize its federal HOME and CDBG funding allocations, in many cases leveraged with state and/or local funding, to increase the supply of affordable housing in Newton for different populations in need. Programs such as the Newton Housing Rehabilitation Program, CDBG One-to-Four Unit Purchase/Rehabilitation Program, and the Newton Homebuyer Program are federal and locally funded programs that continue to address housing affordability issues in Newton.

7. Evaluation of Current Housing Programs, Policies and Activities

A. HOUSING PROGRAMS

HOME Investment Partnerships Program and CDBG Housing Development Program Projects

Newton receives approximately \$1 million in federal Community Development Block Grant (CDBG) and HOME Investment Partnerships Program (HOME) funds annually, which it utilizes to create, preserve, purchase and rehabilitate affordable housing in the City. A significant portion of CDBG funds and all HOME funds are allocated toward increasing the number of affordable housing units and/or assisting low- and moderate-income households in purchasing and/or upgrading existing homes in Newton.

The City's housing development funds are used, in part, to assist the efforts of many active profit and nonprofit housing developers to create affordable units. These have included the Newton Community Development Foundation (NCDF), Citizens for Affordable Housing in Newton Development Organization (CAN-DO), Jewish Community Housing for the Elderly (JCHE), Newton-Wellesley-Weston Committee for Community Living (NWW), The Second Step, Riverside Community Care, and Parkview Homes, LLC, a for-profit entity which is utilizing CDBG and HOME funds to develop 10 units of homeownership housing, all of which will be affordable. One unit will be designed to be fully accessible for a person with a physical disability which goes above both state and federal architectural accessibility requirements for a development of its size.

CDBG One-to-Four Unit Purchase/Rehabilitation Program

This program was designed to streamline the approval process for projects that do not require any zoning changes enabling affordable housing developers to make quick decisions about site acquisition in a fast-moving real estate market. Under this program, as soon as a housing agency sponsor identifies a potential affordable housing development project, Division staff meets to review the project proposal. After staff reviews the proposed project and assesses its feasibility, a funding commitment is made. Because the Planning and Development Board and the Mayor have already approved the program guidelines when the program was initiated in FY02, no additional approvals beyond the staff level are necessary. Currently, the program provides up to \$100,000 per unit of assistance for developers and nonprofits to acquire and rehabilitate properties designated for affordable housing for at least 30 years, although staff plans on recommending increasing the per unit funding amount during FY11.

Staff is also considering additional program subsidies that, if granted, will have a positive impact on access to housing opportunities in the City. Along with an increase in the funding limit, the other proposed revision includes allowing additional program subsidies for projects that create one of the following:

- Units fully accessible to persons with physical disabilities
- Units for low income (<50% of AMI) individuals with special needs

- Units for low income households (<50% of AMI) that do not have rental assistance such as a Section 8 Housing Choice Voucher Program

These program changes speak to the importance of creation and equal access to a variety of housing choice in the City. If revised, the program will make more resources available to create more fully accessible units and increase the supply of units that serve very low income households. Most recently, the CDBG One-to-Four Unit Purchase/Rehabilitation Program provided funding for the development of a two-family property for homeless veterans and their families using HUD VASH Program housing vouchers.

Newton Housing Rehabilitation Program (NHRP)

The NHRP was established in 1976 with the principal purpose of increasing the supply of decent, safe and sanitary affordable housing in the City of Newton. Funded through the CDBG Program, the NHRP provides funding to income eligible homeowners, rental property owners and organizations that serve low- and moderate income individuals for correction of code violations, accessibility improvements, lead and asbestos (hazard) abatement, preservation/restoration of historic residential properties, weatherization, energy conservation and efficiency improvements.

The program's success lies in its flexibility, which allows NHRP to respond to needs in the community as they arise. The program is especially important in two areas of fair housing issues identified in Newton: lead paint remediation and architectural accessibility.

Although the use of lead-based paint began to decline in the 1950s, it is usually found in homes built prior to 1978. Of Newton's 33,126 housing units, 87.3% were built prior to 1978 (American Community Survey data 2005-2007). Lead-based paint is hazardous to children, particularly those under six years of age, who may ingest it or breathe dust that contains lead.

Based on anecdotal evidence, landlords in Newton have refused to rent apartments to families with children because of the presence of lead paint, citing that either the high cost of abatement keeps them from renting to families with children, or the belief that they have the ability to deny the family because the property contains lead paint. Denying an apartment to anyone because of the presence of lead paint is against the Massachusetts Lead Paint Law and it is the responsibility of the landlord to abate the paint. The NHRP is an important financial resource for landlords who otherwise may deny a family with children based on financial constraints or unawareness of the law.

The NHRP is also a financial resource for landlords, nonprofits, the Newton Housing Authority and other eligible applicants to improve architectural access where a reasonable modification has been requested by a tenant or to accommodate a homeowner who is aging-in-place.

In FY11, the program will be revised to target resources to high priority work items such as lead paint abatement and architectural access improvements, and an emergencies-only set-aside for elders and hoarding cases.

Community Preservation Act

In November 2002, Newton voters adopted the Community Preservation Act (CPA). Money raised from a one percent surcharge on real estate taxes and a Massachusetts state matching

fund is used to acquire, create and preserve open space; acquire and preserve historic resources; acquire, create and preserve land for recreation use; create, preserve and support community housing; and rehabilitate or restore community housing acquisitions/developments. The CPA provides an additional funding resource for affordable housing developers, and CPA-funded community housing can benefit households earning under 100 percent of AMI.

CPA funds can also be used to assist private affordable housing developers in leveraging other federal and state funds, and can be used to fund both large- and small-scale multi-family developments which are not eligible to receive CDBG or HOME funding.

Currently, affordable housing projects that receive CPA funds are not required to go through an accessibility review like what is required for CDBG- and HOME-funded projects. Accessibility review of CPA-funded housing projects would ensure compliance with ADA requirements and help expand housing options for elderly and people with disabilities. It is the goal of Division staff to ensure that all housing projects that use public subsidy are compliant with ADA requirements. The potential hiring of a city-wide architectural access consultant and the architectural access checklist discussed earlier in this analysis will help ensure that projects utilizing CPA funding undergo an accessibility review as part of the normal project scoping process. Additionally, implementing the Guidelines for Uniform Local Resident Selection Preferences in Affordable Housing in all housing projects that only utilize CPA funding would help achieve best practices in affirmative marketing and local preference criteria and thresholds.

Newton Homebuyer Assistance Program

The Newton Homebuyer Assistance Program provides assistance to income-eligible first time homebuyers of up to \$115,000 in zero interest rate deferred, forgivable loans to ensure that the homeowner is spending no more than 33% of their monthly income on housing expenses. The program helps to mitigate some of the existing obstacles that prevent low- and moderate-income households from purchasing a home by giving the qualifying households the ability to choose market rate units for sale in Newton.

Current subsidy levels limit the ability to buy-down properties with three or more bedrooms to an affordable price, thus limiting properties to mainly condominiums. Because of this limitation, housing choices become limited for qualifying households, especially for families with children that require more bedrooms.

In FY11, housing staff plans to recommend to the Community Preservation Committee and Board of Aldermen that the subsidy limit be increased to reflect the current market prices of for sale properties in part to enable greater purchasing power to more households for a wider available range of inventory. As part of this proposed change staff will, among other changes, develop a more comprehensive affirmative marketing and lottery plan that meets DHCD's Local Initiative Program (LIP) requirements. The revised affirmative marketing plan, discussed in greater detail in this section, will also be used for all applicable CDBG and HOME-funded housing projects.

Newton Community Development Authority

The Newton Community Development Authority (NCDA) was established in 1975 to act as an urban renewal agency and as an agent of the City. Currently, the NCDA's primary function is to act on behalf of the City to secure mortgages necessary for affordable housing development, housing rehabilitation and economic development projects funded with CDBG, HOME and Community Preservation Act funds. Additionally, the NCDA has the ability to acquire property, hold it on a short-term basis and resell it as quickly as possible to eligible buyers in accordance with the restrictions placed by local, state and federal housing programs.

Accessibility Programs

The Mayor's Committee for People with Disabilities works closely with various City departments to resolve temporary and long-term access issues. The *FY11-15 WestMetro HOME Consolidated Plan* and *FY11 Annual Action Plan* both provide greater detail of accessibility programs in Newton and Consortium-wide. The top four accessibility priority needs as expressed by the MCPD in order of importance are:

1. Improvements to public thoroughfares
2. Improvements to public buildings
3. Improvements to parks and recreational areas and facilities
4. Improvements to nonprofit agencies

B. HOUSING PROGRAM POLICIES

WestMetro Consortium Affirmative Fair Housing Marketing Plan

The City of Newton, a participating jurisdiction in the WestMetro HOME Consortium, has adopted an *Affirmative Fair Housing Marketing Plan*. The procedures and requirements are in place for the City's HUD-funded rental and homebuyer projects. Each procedure is designed to attract eligible persons in the housing market area to available housing programs without regard to race, color, national origin, sex, religion, familial status, or disability.

Newton's marketing plan ensures that the *Affirmative Marketing Policy and Implementing Procedures* of the WestMetro HOME Consortium are also implemented. In accordance with the applicable HOME regulations and in furtherance of the Consortium's commitment to non-discrimination and equal opportunity in housing, the Consortium has established procedures to affirmatively market units constructed or rehabilitated under the HOME Program. These procedures are intended to further the objectives of Title VIII of the Civil Rights Act of 1968 and Executive Order 11063. It is the affirmative marketing goal of the Consortium to assure that individuals who normally might not apply for the vacant rehabilitated or newly constructed units because of their race, ethnicity, age, disability, or other factors know about the vacancies, feel welcome to apply, and have the opportunity to rent the units.

Revisions to the WestMetro Consortium Affirmative Fair Housing Marketing Plan

The WestMetro Consortium's *Affirmative Fair Housing Marketing Plan* is currently being revised to incorporate the DHCD's *Affirmative Fair Housing and Civil Rights Policy* (April 2009), which establishes statewide fair housing and civil right policy best practices, standards, and strategies

for implementation. The policy calls to action state and local housing agencies, housing authorities, fair housing organizations and the nonprofit and for-profit housing and community development industries to partner in fair housing actions and initiatives. The revised *Affirmative Fair Housing Marketing Plan* will be used by all members of the WestMetro HOME Consortium.

Local Resident Selection Policy

The City of Newton's local preference policy for rental and homeownership affordable housing developments is set at 70%. Since the City's minority population does not mirror that of the Boston region, under DHCD guidelines, the developer must include under the "local preference" category, minority households from outside the city up to the percentage difference between the minority population in the city and the minority population in the Boston region. For example, if that difference were 20% then the 70% local preference would actually be 50% "local" and 20% from outside the city. The actual percentage difference between the City and the region would be calculated from the census data.

Revisions to Local Resident Selection Policy

The Fair Housing Task Force significantly revised the local resident selection policy for adoption into all City housing programs. The *Guidelines for Uniform Local Resident Selection Preferences in Affordable Housing* are intended for use in affordable rental and homeownership programs at initial distribution of units and upon turnover or resale. The local resident selection preference policy 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 the CDBG and HOME Programs, Community Preservation Act Program, Inclusionary Zoning Ordinance, and Chapter 40B. When a developer utilizes one or more of these regulatory and funding programs, the housing staff will ensure that the uniform guidelines are followed.

Beyond establishing the local preference criteria, the uniform guidelines state that there shall be no delay, denial, or exclusion from the development based upon a characteristic protected by Newton's human rights ordinance and applicable fair housing and civil rights laws. They also set local preference for units that are designed or modified to be accessible to people with disabilities. The policy also adopts the affirmative fair housing marketing and selection plans established by DHCD to mitigate potential discriminatory outcomes.

Residential Anti-Displacement and Relocation Assistance Plan for HOME Consortium

Permanent Relocation

It is the policy of the City of Newton Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) programs and the WestMetro HOME Consortium to take all reasonable steps to minimize displacement as a result of CDBG- and HOME-assisted projects, including:

- Considering whether displacement will occur during feasibility determinations
- Identifying potential relocation workload and resources early
- Assuring, whenever possible, that residential occupants of buildings rehabilitated are offered an opportunity to return

- Planning rehabilitation projects to include “staging” where this would eliminate temporary displacement
- Following notification procedures carefully so that families do not leave because they are not informed about planned projects or their rights

When a project requires relocation, Newton Housing and Community Development Division staff or the WestMetro HOME Consortium member communities are responsible for ensuring that all notices are sent in compliance with both the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) in a timely manner.

Temporary Relocation

Temporary relocation often occurs as the result of lead abatement and other rehabilitation activities in renter- and owner-occupied units. Although the City of Newton Housing and Community Development Division is not required to, in most cases it pays for the temporary relocation of displaced renters and/or homeowners whose residences are being rehabilitated.

Monitoring Policy and Plan

In 2004, the City of Newton implemented a Monitoring and Compliance Plan for CDBG and HOME Program-funded housing projects. The City of Newton’s Department of Planning and Development is required by HUD to ensure that all HUD-funded housing projects comply with federal guidelines and restrictions under CDBG regulations at 24 CFR Part 570.501(b) and HOME Program regulations at 24 CFR Part 92. These include federal fair housing laws and regulations. Housing development projects are monitored to ensure that the requirements outlined in the loan agreement between the owner and/or developer and the Newton Community Development Authority (NCDA), which contain these federal guidelines and regulations are being met.

For each project, the City must verify that the population being served is income-eligible, residents are not being charged more than 30% of their gross annual household income, lease contracts are for at least a one year term, and assisted units meet Section 8 Minimum Housing Quality Standards (HQS). The City also monitors all federally and locally funded first time homebuyer units, which consists of an annual verification of the homeowner’s principal residence.⁵⁶

Both the City of Newton and the WestMetro HOME Consortium have comprehensive monitoring plans. To ensure an appropriate level of staff effort, the Consortium’s monitoring strategy involves a two tiered approach: Ongoing monitoring and on-site monitoring. Ongoing monitoring occurs for all HOME-assisted activities each program year. Basic ongoing monitoring involves conducting periodic reviews of activities to ensure regulatory compliance and track program performance for all developers, sponsors, and contractors receiving HOME funds for projects and for Consortium Members. On-site monitoring seeks to closely examine whether performance or compliance problems exist and identify the aspects of the program or project that are contributing to the adverse situation. HOME Consortium members use a risk factor analysis to target certain HOME Program areas or organizations for in-depth monitoring each

⁵⁶ Homebuyer Assistance Program units funded through Community Preservation Act Funds

year. Overall monitoring objectives of the WestMetro HOME Consortium monitoring plan include:

- Identifying and tracking program and project results
- Identifying technical assistance needs of Member communities, CHDOs and subrecipient staff
- Ensuring timely expenditure of HOME funds
- Documenting compliance with program rules
- Preventing fraud and abuse
- Identifying innovative tools and techniques that support affordable housing goals.

The City also monitors inclusionary zoning and 40B units by communicating with the applicable subsidizing agency and property managers to ensure that applicable housing regulations and policies are adhered to after initial occupancy.

Limited English Proficiency / Language Assistance Plan

Per the Planning and Development Department's *Language Assistance Plan*, it is the stated policy of the Planning and Development Department to ensure that all Limited English Proficiency (LEP) individuals and/or deaf or hearing impaired individuals who participate in programs and services are offered free access to competent interpreters during consultations, case-related communications and/or public hearings.⁵⁷ Language assistance includes interpretation and/or translation, if needed. The City also provides a TDD/TTY device in the Customer service Department for use by all City departments. This number appears on all Department letterhead. As of 2007, all public advertisements in local papers must provide information in Chinese, Russian and Spanish that interpretation services are available at the advertised public hearing, if needed.

The Planning and Development Department utilized the four-factor analysis of demography, frequency of contact, importance, and resources to aid in developing the City's Language Assistance Plan. Using Census and the U.S. Department of Labor data, the department developed a demographic profile of the population served or likely to be served by the Department's federally funded programs and activities to identify languages other than English most commonly spoken by Newton residents. They are: Chinese, Russian, Italian, and Spanish.

Revising the Language Assistance Plan

With the goal of consolidating fair housing efforts in the WestMetro HOME Consortium, it is the goal of the Division to collaborate with the West Metro HOME Consortium communities to develop and create a consolidated Language Assistance Plan. A Consortium-wide plan will strengthen the ability to share resources and best practices, as well as to reassess the Consortium's demographics to accurately reflect the primary languages based on the results of the 2010 Census.

⁵⁷City of Newton Planning and Development Department. *Limited English Proficiency Plan*. 2007.

Neighborhood Notification Policy

Currently, it is the Planning and Development Department's policy - as part of the affordable housing development process - to notify abutters and ward aldermen of a proposed CDBG One-to-Four Unit Purchase/Rehabilitation Program project. This notification is not required by HUD, nor is it a City zoning requirement, since all Purchase Rehabilitation Program projects are limited to by-right projects. This policy may have implications for fair housing if opposition to the project is based solely on the affordable component of the project or on potential protected classes that may be served. Housing staff would like to consult with the Fair Housing Committee on this potential issue.

HUD Section 3 Requirements

Section 3 is a provision of the Housing and Urban Development Act of 1968, as amended, and falls under HUD's Office of Fair Housing and Equal Opportunity. Section 3 recognizes that the normal expenditure of certain HUD funds typically results in new jobs, contracts, and other economic opportunities; and when these opportunities are created, low- and very low-income persons residing in the community in which the funds are spent (regardless of race and gender), and the businesses that substantially employ them, should receive priority consideration.

The requirements of Section 3 apply to recipients of HUD financial assistance exceeding \$200,000 that is used for projects involving housing construction, rehabilitation, or other public construction. Covered assistance includes CDBG, HOME, Disaster Recovery Assistance, Housing for Persons with Aids (HOPWA) and certain Economic Stimulus Funding.

The City maintains an affirmative posture regarding employment opportunities for low- and moderate-income residents in connection with housing and community development program sponsored projects and encourages the hiring of such persons for new trainees, apprentices or regular positions which may become available as a result of such projects. In addition, the City maintains a similarly affirmative posture with regard to opportunities for eligible businesses doing project-related work. The City is in the process of updating its Section 3 plan, which will include a set of procedural guidelines and forms to distribute to subrecipients, contractors and subcontractors required to follow Section 3.

C. RECENT FAIR HOUSING ACTIVITIES

Fair Housing Initiatives Program Grant (FHIP)

In 2007, the City of Newton was awarded and implemented a Fair Housing Initiatives Program (FHIP) grant. The FHIP grant was an 18 month initiative that included the 14 communities of Bedford, Belmont, Brookline, Framingham, Hudson, Lexington, Lincoln, Natick, Needham, Sudbury, Watertown, Newton, Waltham and Marlboro. The City of Newton hired the Fair Housing Center of Greater Boston (FHCGB) to serve as a consultant throughout the FHIP grant implementation period. The City worked closely with the FHCGB to develop the outreach and training materials of the program.

The FHIP grant resulted in many successes in heightening awareness of fair housing rights and laws. The FHIP grant included the development of a fair housing complaint referral system

administered by the Newton Human Rights Commission with the assistance of Planning and Development and Health and Human services staff, trainings for targeted audiences open to Newton and the WestMetro Consortium communities, the development of a fair housing website and creation and distribution of fair housing related brochures. Press releases and press conferences with public officials helped to highlight the efforts and also served as an additional outreach tool to real estate agents, landlords, property managers, lenders and mortgage brokers on their fair housing rights and responsibilities.

Training and education activities

Over the course of the FHIP grant implementation, the City delivered 16 training sessions to 274 people of various target audiences. The trainings included the following audiences / topics:

- Human Rights Commission Complaint referral system training for municipal staff
- Realtors, property managers, and landlords
- Housing and social service agencies
- Disabilities discrimination training for housing authorities and municipal staff
- Homebuyer programs (administered by municipal and non-profit agencies)
- Mortgage lenders & brokers
- Analysis of Impediments training for West Metro Consortium municipal staff

Creation of Fair Housing Website

Newton's fair housing website is a resource for information on fair housing laws. For renters and homebuyers the website provides information on how to identify housing discrimination and describes how someone who has possibly experienced discrimination can file a fair housing complaint with the Newton Human Rights Commission, MCAD, the FHCGB, or HUD. The information is made available in the Spanish, Russian, and Mandarin Chinese languages. For realtors, landlords, and property managers, it provides information on the Massachusetts Lead Paint Law and suggests some best business practices they can implement to ensure they don't unknowingly or unintentionally discriminate. Lastly, the site provides a list of additional fair housing resources, information on fair housing related studies and policies, and posts information on upcoming fair housing-related training and events, along with recent developments in fair housing. To view the City's fair housing website go to: <http://www.ci.newton.ma.us/fairhousing/>.

Distribution of brochures

The Fair Housing Center of Greater Boston also developed brochures for the general public on housing discrimination based on race, national origin, family status, and source of income and on more specific topics such as fair housing for first time homebuyers, fair lending practices, and a "Landlords, Know the Law!" brochure, and with the participation of City staff, a brochure on the Human Rights Commission's fair housing complaint system. The brochures were translated into the three major languages represented in the consortia: Spanish, Russian, and Mandarin Chinese. A total of 8,200 brochures were distributed throughout the WestMetro HOME Consortium communities where they were displayed in prominent locations including town offices, libraries, health centers and housing authorities. Four hundred brochures were sent to the Newton Housing Authority and distributed to their clients.

The FHIP grant provided a comprehensive and proactive approach toward fair housing outreach, education and training, and did so a large scale. In FY11, the City of Newton will apply for an additional FHIP grant to sustain the high levels of education that the previous grant enabled.

Current Activities

In 2009, the Fair Housing Committee developed its first major work plan and Division staff allocated \$25,000 in CDBG funds to assist with the committee's activities. The work plan includes fair housing training to targeted audiences such as real estate agents (with focus on lead paint and Section 8 issues), human service providers and housing counselors, housing authorities (with focus on reasonable accommodations for persons with disabilities), landlords and managers of private housing, and City officials including the aldermen and all housing decision makers (with focus on the Westchester County lawsuit settlement, identification of architectural accessibility issues, and familial status discrimination).

In the course of one year, the Fair Housing Committee has sponsored three events in which 75 people were educated on various fair housing topics. The committee will also soon be co-sponsoring an event to both educate and connect Newton landlords with the Section 8 program voucher holders as well as other landlord resources (such as funding for lead abatement and accessibility improvements through local and state programs).

The work plan also includes a publicity campaign for the general public to disseminate fair housing education and promote the use of available fair housing complaint resources, such as the Newton Human Rights Commission, the Fair Housing Center of Greater Boston, Massachusetts Commission Against Discrimination, and HUD. The campaign would utilize strategies that maximize effective and meaningful information to producers, providers, and consumers of housing in Newton.

As part of the publicity campaign, the Committee collaborated with the Brookline Human Rights Commission and the Fair Housing Center of Greater Boston to record "Fair Housing Conversations," a television show which will air on Newton and Brookline public access television. The half-hour discussion focused on general fair housing information and featured fair housing experts as well as the Chairs of both the Newton Fair Housing Committee and the Brookline Human Rights Commission. This program may be followed by further television programs focusing on specific fair housing topics, such as reasonable accommodations / modifications and Section 8 Housing Choice Voucher Program issues.

8. Evaluation of Jurisdiction's Current Fair Housing Legal Status

A. FAIR HOUSING COMPLAINTS OR COMPLIANCE REVIEWS WHERE THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) HAS ISSUED A CHARGE OF OR MADE A FINDING OF DISCRIMINATION

The City of Newton has received no fair housing complaints or compliance reviews where HUD has issued a charge of or made a finding of discrimination.

B. WHERE THERE IS A DETERMINATION OF UNLAWFUL SEGREGATION OR OTHER HOUSING DISCRIMINATION BY A COURT OR A FINDING OF NONCOMPLIANCE BY HUD UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 OR SECTION 504 OF THE REHABILITATION ACT OF 1973, OR WHERE THE SECRETARY HAS ISSUED A CHARGE UNDER THE FAIR HOUSING ACT REGARDING ASSISTED HOUSING WITHIN A RECIPIENT'S JURISDICTION, AN ANALYSIS OF THE ACTIONS WHICH COULD BE TAKEN BY THE RECIPIENT TO HELP REMEDY THE DISCRIMINATORY CONDITION, INCLUDING ACTIONS INVOLVING THE EXPENDITURE OF FUNDS BY THE JURISDICTION

In September 2005, HUD's Office of Fair Housing and Equal Opportunity completed a comprehensive review of the City's CDBG program to determine whether the CDBG funded programs managed by the City were in compliance with the nondiscrimination provisions of Section 109, Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

The compliance review found that the City was non-compliant with Section 504 in four separate instances and recommendations were made in three more instances where the City was compliant. On September 29, 2005, the City of Newton entered into a Voluntary Compliance Agreement (VCA) with HUD to address the Compliance Review's findings and to carry out the recommendations established for the City by HUD. In 2008, HUD concluded that Newton met the VCA obligations and the City was in compliance.

C. FAIR HOUSING DISCRIMINATION SUIT FILED BY THE DEPARTMENT OF JUSTICE OR PRIVATE PLAINTIFFS

The City of Newton has not been a party to any fair housing discrimination suits filed by the Department of Justice or private plaintiffs.

D. COMPLAINTS LODGED AGAINST PRIVATE PARTIES LOCATED IN NEWTON

As part of this analysis, the Housing and Community Development Division staff compiled listings of complaints that were lodged against private parties located in Newton with the U.S. Department of Housing and Urban Development (HUD), the Massachusetts Commission Against Discrimination (MCAD), and the Newton Human Rights Commission. Overall, a maximum of 20 Newton complaints were filed with HUD or MCAD from 2004 to 2009.⁵⁸ In addition, information was collected about complaints received and investigated by the Newton Human Rights Commission from 2007 through 2009 and by the Fair Housing Center of Greater Boston (for the WestMetro HOME Consortium communities including Newton from 2001 to 2007).

Complaints received by HUD

From August 2004 to March 2009, 14 Title VIII complaints were filed which were located in the City of Newton. All were referred to MCAD for processing, as required. Of the total, 10 were determined to be “no cause.” One resulted in a judicial consent order (on the basis of discriminatory refusal to rent and discrimination in terms/conditions/privileges of rental to a family with children), and another case was withdrawn by the complainant after resolution (race).

Complaints received by MCAD

From April 2005 through November 2009, 6 Title VIII/Chapter 151B complaints were filed in the City of Newton. These cases may overlap with some of the cases referred by HUD to MCAD. Of the six, three were closed as no probable cause, two were probable cause and MCAD settled them, and one was settled by the parties pre-determination.

Complaints received by Newton Human Rights Commission

The Newton Human Rights Commission investigates complaints of discrimination filed with the Commission and mediates disputes as appropriate to achieve resolutions. If a resolution cannot be made, the Commission can refer the complaint to MCAD or HUD.

From April 2007 through November 2009, five fair housing complaints were filed with the Newton Human Rights Commission. Two of the complaints were filed on the basis of disability discrimination. The first case based on disability discrimination was closed following advice given to the complainant about seeking a building code variance to resolve the issue. The second case was dismissed following investigation due to lack of jurisdiction. The third complaint was on the basis of race, and the claim was later withdrawn. The fourth complaint was filed on the basis of national origin and public assistance. An informal resolution was attempted which proved unsuccessful. The complaint was then referred to MCAD for processing. The fifth claim was based on religion, and is currently pending.

⁵⁸ In some cases, complaints filed with both MCAD and HUD. The agencies do not clarify which agency processed the complaint, so there may be some redundancy in the reporting.

According to the Newton Human Rights Commissioner responsible for housing discrimination matters, some improvements have been made to the complaint process. These improvements include, for example, having translators readily available, fine tuning the mediation process, and obtaining more information and facts at the outset to determine whether there is a connection between the alleged issue and discrimination.

Complaints received by Fair Housing Center of Greater Boston

From 2001 to September 2007, the total number of complaints received by the Fair Housing Center of Greater Boston regarding discrimination in Consortium cities and towns was 45. This figure includes six where the complaint city was not reported, but the caller did live in a Consortium city or town. The Fair Housing Center investigated 30 of these (for others the complainant did not return phone calls to the FHCBG or it was determined that the complaint was not in their jurisdiction).

Of the 30 cases, 12 were filed with HUD or MCAD (of those, three received relief), one was referred to an attorney, and five were settled by the Fair Housing Center without an actual complaint being filed. The following table includes a breakdown of 45 fair housing complaints *received* by the Fair Housing Center by type, and geography from 2001 to 2007:

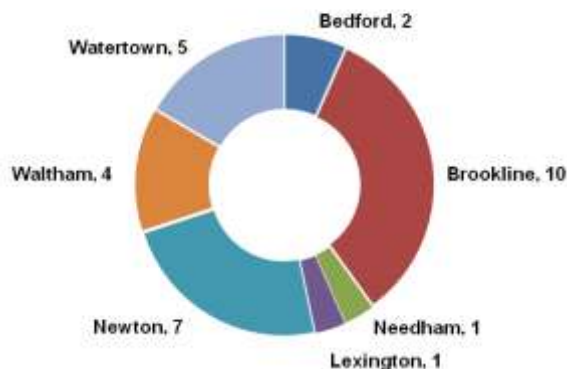
Table 8. Complaints received by the FHCBG from Consortium Communities (2001-2007)

Consortium Community	Type of Discrimination					Total
	Disability	Familial Status	National Origin	Source of Income	Race	
Bedford	1	1	-	-	-	2
Belmont	-	-	-	1	-	1
Brookline	5	3	2	4	2	16
Framingham	1	-	-	-	-	1
Lexington	-	1	1	-	-	2
Lincoln	-	-	-	-	-	0
Natick	1	-	-	-	-	1
Needham	1	-	-	1	-	2
Newton	1	1	2	1	3	8
Sudbury	-	-	-	-	-	0
Waltham	-	1	-	4	1	6
Watertown	-	4	-	1	1	6
Total	10	11	5	12	7	45

Source: Fair Housing Center of Greater Boston, 2007.

Of the 30 fair housing complaints *investigated* by the FHCGB, the breakdown by community is shown below.⁵⁹

Complaints Investigated by the Fair Housing Center of Greater Boston, by West Metro HOME Consortium Community, 2001 - 2007



In aggregate, these statistics reflect the findings by prior Fair Housing Center of Greater Boston testing studies and DHCD's analyses which conclude that discrimination is not isolated, but rather is occurring throughout the greater Boston area and beyond. Fewer complaints of fair housing discrimination in some communities than in others may be due to several reasons: discrimination is simply not occurring, alleged discrimination has occurred but is unrecognized or has gone unreported, alleged discrimination is occurring but is being filed with another agency other than the Fair Housing Center of Greater Boston, or households do not know where to file an alleged discrimination complaint. Proximity to areas with greater diversity and diversity within communities may also be a factor (note that the communities that received more complaints were in closer proximity to Boston).

The Newton and Consortium trends also reflect the national trend of increasing discrimination based on disability; the Newton Human Rights Commission had two such cases, and discrimination on this protected class was amongst the top three alleged discrimination complaints received by the Fair Housing Center of Greater Boston.

As long as discrimination is a reality, the local, regional, state and national resources will continue to pursue justice for those who have been discriminated against. It is essential that consumers continue to have access to these resources and exercise their rights to utilize them if they feel they have been discriminated against.

⁵⁹ Fair Housing Center of Greater Boston. 2007.

9. Conclusions and Recommendations

The following is a summary of the identified impediments to fair housing choice. The impediments are broken-down by relevant category: Public Sector, Private Sector and Public/Private Sector as well as by subcategory (e.g. zoning and site selection). This section also includes the City's actions to address these impediments as well as to generally assure that the environment in Newton is conducive to fair housing choice for all. Further detail on many of the initiatives can found in the *Fair Housing Action Plan*, which is currently the operative document to affirmatively further fair housing for both the Division staff and the Fair Housing Committee. Other relevant documents include the *FY11-15 West Metro HOME Consortium Consolidated Plan* and *Newton's 2007 Comprehensive Plan*.

A. IMPEDIMENTS IDENTIFIED IN PUBLIC SECTOR

Zoning and site selection

- Dimensional requirements for commercial / business district zones are not conducive for residential uses, thus limiting affordable housing development and housing choices close to public transit.
- Dimensional, parking, and street requirements discourage residential development
- "Not in My Back Yard" Opposition

Actions

The City's 2007 *Comprehensive Plan*, *FY06-10 AI*, *Fair Housing Action Plan*, and this *AI* identify many of the same zoning and land use policy impediments and recommend the following actions to overcome impediments to fair housing choice relative to zoning and site selection:

- Support the principles of smart growth in the *Comprehensive Plan*. (*This action also identified in Action #5 of FHAP*)
- Revise zoning to more broadly allow mixed-income and affordable residential uses in non-residential districts. (*This action also identified in Action #5 of FHAP*)
- Broaden the range of explicitly permitted residential uses, especially for uses that expand housing choice such as single room occupancy, supportive housing, and others. (*This action also identified in Action #5 of FHAP*)
- Examine and revise the accessory apartment ordinance. (*This action also identified in Action #5 of FHAP*).
- Continue to capitalize programs that streamline the funding process for by-right projects containing affordable units, such as the One-to-Four Unit Purchase Rehabilitation Program.
- Continue to provide fair housing education, especially on the consequences of disparate impact through advocacy groups, the Newton Fair Housing Committee, the Newton Housing Partnership and Planning and Development staff, to community and public officials, relevant boards, and developers when new projects are being proposed.

Architectural Accessibility

- The City's existing system for reviewing, approving and monitoring residential developments for compliance with local, state and federal architectural access requirements needs to be examined and significantly strengthened.

Actions

The *Fair Housing Action Plan* and this analysis call for the development of a comprehensive and 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. *(This action also identified in Action #9 of FHAP)*
- 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. *(This action also identified in Action #9 of FHAP)*
- 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). *(This action also identified in Action #9 of FHAP)*
- Require projects covered by architectural access laws to have plans and the resulting development certified as compliant by a party having expertise in architectural access regulations. *(This action also identified in Action #9 of FHAP)*
- 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. *(This action also identified in Action #9 of FHAP)*
- Consider adopting one or more ordinances implementing the foregoing initiatives. This includes identifying responsibilities and accountability for projects to meet architectural access standards. *(This action also identified in Action #9 of FHAP)*
- Ensure that accessibility provisions are included in written agreements before construction / funding housing developments. *(This action recommended by the Mayor's Committee for People with Disabilities).*

- Have housing developers document MCPD recommendations to assure compliance with such recommendations, when applicable. (*This action recommended by the Mayor's Committee for People with Disabilities*).
- Create City policy(s) for housing units that use City-allocated funding such as CDBG or HOME that goes beyond the minimum state and federal architectural access requirements. (*This action recommended by housing staff, Newton Housing Partnership, and identified in FHAP*)

Current Housing Programs and Policies

- Neighborhood notification required by the affordable housing development process for by-right projects may initiate NIMBY or other opposition with fair housing implications.

Actions

- Housing and Community Development staff will discuss the potential implications of the neighborhood notification policy with the Fair Housing Committee and revise the policy, as necessary.

B. IMPEDIMENTS IDENTIFIED IN PRIVATE SECTOR

Private Sector Real Estate Policies and Practices

- Based on the results of testing completed in 2005, 2006 and 2007, and documented and anecdotal instances since that time, discrimination based on race, national origin, familial status, source of income, and disability occurs in the City's rental and for-sale real estate markets.

Actions

Every action identified in this analysis, the *Fair Housing Action Plan* and the recommendations discussed in the Fair Housing Center and Disability Law Center's Audit results applies toward overcoming discrimination in the rental and for sale markets. More specifically, encouraging self-monitoring by the real estate industry, enforcement, actions and efforts involving education, outreach and advocacy would be effective towards overcoming this impediment.

- Work in partnership with the local real estate community to build awareness of fair housing requirements. (*This action also identified in Action #4 of FHAP*). Actions include:
 - Provide fair housing education for real estate brokers and agents, property managers and landlords through workshops, and marketing the Newton's fair housing website and conducting special events and resource fairs.
 - Provide Newton real estate agencies, property managers, and landlords with resources such as brochures or other literature in multiple languages containing information about the fair housing laws to distribute to all prospective tenants and homebuyers.

Encourage self-monitoring by the real estate industry. (*This action also identified in Action #10 of FHAP, unless otherwise noted*) These actions include:

- Encouraging 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.
- Assisting 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.

Additionally, it is highly recommended that relationships be established with lenders doing business in Newton so that fair housing issues in the lending industry can be part of an overall strategy for furthering fair housing within the City. Actions that will assist in establishing fair housing best practices in the Newton lending industry include:

- Newton lenders should 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. (*This action also identified in Action #6 of FHAP*)
- 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. (*This action also identified in Action #6 of FHAP*)
- Continue to require participants in Newton's Homebuyer Assistance Program to attend homeownership classes prior to purchasing a home so that they are aware of the variety of mortgages available. (*This action also identified in Action #6 of FHAP*)
- Refer homebuyers utilizing Newton Homebuyer Assistance Program to the information on mortgages on the Federal Reserve Bank of Boston website at <http://www.bos.frb.org/consumer/topics/mortgages.htm>. (*This action also identified in Action #6 of FHAP*)
- 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. (*This action also identified in Action #6 of FHAP*)
- Continue to provide free reverse mortgage workshops for seniors that are experiencing difficulty in maintaining their mortgage payments. These workshops explain the purpose of a reverse mortgage with the goal of helping consumers make informed decisions.

- 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. *(This action also identified in Action #6 of FHAP)*
- 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. *(This action also identified in Action #6 of FHAP)*

C. IMPEDIMENTS IDENTIFIED IN PUBLIC AND PRIVATE SECTOR

Compliance and Monitoring

- More comprehensive fair housing data in conjunction with consistent monitoring is needed to ensure that fair housing practices in both market rate and subsidized housing units not only remain constant, but improve and expand.

Actions

Compliance

Assure comprehensive compliance with all applicable civil rights requirements within all City housing activities. *(This action also identified in Action #8 of FHAP)* These actions include:

- Consider creating a position of Civil Rights Coordinator in connection with the citywide Fair Housing Committee, or use existing staff resources to monitor 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.
- Include the Civil Rights Access Checklist as part of the City's HOME and CDBG monitoring efforts.
- Use the results obtained from the use of the checklist to help determine compliance activities.
- Develop a comprehensive integrated plan to assure compliance with all architectural access requirements within all City departments and the Newton Housing Authority.
- At the appropriate future time, conduct periodic fair housing audits of the rental and for-sale markets to determine fair housing compliance and to judge the efficacy of the *Fair Housing Action Plan*. Adjust *Fair Housing Action Plan* findings and actions to changed conditions identified in the audits. Share results with City officials, staff,

residents, and housing stakeholders. (*This action also identified in Action #8 of FHAP*)

Data Collection

- Determine discrete and available indicators and data collection methodology to evaluate the “status” of housing choice for members of protected classes and fair housing practices within the local housing market:
 - Collect, analyze, and report to relevant stakeholders and advocacy groups on relevant data pertaining to racial/ethnic minorities and other protected classes in the City’s subsidized and market rate units, (e.g. the number of housing-related reasonable accommodations made, granted, or denied for persons with disabilities)
 - Augment the City’s subsidized housing inventory with the number of units fully accessible to persons with a physical disability

Informational Programs, Education, Outreach, and Advocacy

- Fair housing knowledge does not extend to all consumers, producers, and providers of housing. This results in misconceptions, lack of understanding, and ultimately violation of fair housing laws.
- Language barriers faced by recent immigrants and high mobility rates of certain groups in Newton and the greater Boston area creates a challenge to access available housing opportunities and obtain knowledge and empowerment of fair housing rights.
- Lack of knowledge results in underutilization of available complaint systems and resources, meaning possible fair housing violations go unaddressed and without sanction for those who discriminate.
- Lack of fair housing training for City staff, officials and zoning and planning boards. Such parties should also be made aware of new fair housing issues and developments.
- Fair housing must be championed in both the public and private sectors.

Actions

- Sufficient staff should be assigned and new outside resources such as grants and local and regional affiliations and partnerships sought to assure that work of the Fair Housing Committee is carried out. This includes, but is not limited to, continuing existing relationships with the Fair Housing Center of Greater Boston, The Disability Law Center and the Metropolitan Boston Housing Partnership along with cultivating relationships with other similar organizations. (*This action also identified in Action #2 of FHAP*)
- 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. (*This action also identified in Action #3 of FHAP*)
- Coordinate the fair housing-related activities of key boards and departments (such as the Newton Housing Partnership, the Newton 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. (*This action also identified in Action #1 of FHAP*)

- 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. (*This action also identified in Action #3 of FHAP*). Such actions include:
 - Encouraging outreach and education at community events such as Newton Pride, Community Development Block Grant week, etc. when fair housing literature can easily be distributed.
 - Exploring partnership(s) with the Newton-based Disability Awareness Institute for education and programming.
 - Continuing 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 brochures describing the Newton complaint processing system in a variety of languages and have them available on the City's website.
 - Applying for additional Fair Housing Initiative Program grants from HUD.
- Continuing to promote the availability and usability of the City's intake, resolution and referral process for fair housing complaints. (*This action also identified in Action #11 of FHAP*)
- City staff must be responsible for actively marketing Newton's housing complaint system and complaint hotline, including making the contact information widely available through notices in local papers, the City's websites, fair housing posters in real estate offices, and other venues. (*This action also identified in Action #11 of FHAP*)
- Dedicate staff time 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. (*This action also identified in Action #11 of FHAP*)
- Work in partnership with other organizations and interests in the City to educate and 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. (*This action also identified in Action #5 of FHAP*)
- To establish best practices and proactive strategies City-wide, fair housing needs to be championed by a leader in both the public and private sectors.

Housing Affordability and Economic Factors

- High cost of housing, high development costs, land acquisition and lack of available land for new development limits opportunities, diverse siting of affordable housing, and housing choice.

- The inability of the City to act quickly in a highly competitive real-estate market makes it challenging to create or preserve affordable and/or accessible housing.
- The overall shortage of affordable and accessible rental units and extremely low vacancy rates of these units throughout the City of Newton.
- The age of housing stock coupled with the existence of lead paint hazards and limited financial resources for landlords to abate lead paint limits housing choices for families with young children.
- Although reusing existing stock is promoted, the age and type of existing housing stock makes it difficult to rehabilitate units to become fully accessible units in a cost effective manner.
- The high costs of housing in the City of Newton can restrict low-and moderate-income families from purchasing or renting housing units, especially detached single family homes.

Actions

- Continue to fund the One-to-Four Unit Purchase/Rehabilitation Program, Housing Rehabilitation Program, and the Housing Development Program.
- Include additional program subsidies in the One-to-Four Unit Purchase/Rehabilitation Program for projects that create units that are accessible to persons with physical disabilities or for low-income individuals (<50% of AMI) with special needs.
- Continue to leverage HOME and CDBG funds with CPA funds for development projects and investigate the ability of leveraging State funds.
- Assure that the Community Preservation Act stays intact in Newton. (*This action also identified in Action #5 of FHAP*)
- Provide a waiver of City review fees in proportion to the share of affordable units in a development. (*This action also identified in Action #5 of FHAP*)
- Promote employer-supported affordable housing. (*This action also identified in Action #5 of FHAP*)
- Continue to identify City-owned land appropriate for development.
- Identify hazard abatement and architectural access as high priorities for funding under the Newton Housing Rehabilitation Program.
- The City of Newton, through the housing office and the Health and Human Services Department, will continue efforts to eliminate lead-based paint hazards and to educate property owners/managers and homeowners about the dangers of lead-based paint.

- Continue to promote an affordable housing trust fund to streamline and expedite the funding process for developers of smaller scale projects.
- Increase the subsidy limit for the Homebuyer Assistance Program to enable greater purchasing power for qualifying households to increase the ability to purchase a home near transportation and employment opportunities.

D. RECOMMENDATIONS

Since the completion of the *FY06-10 AI*, there have been significant changes in fair housing-related activities and knowledge. As demographics shift and local, state, and federal regulations, policies and programs continually evolve, it is essential that Newton continue to be proactive in its fair housing efforts and remain dedicated to developing and implementing best practices to affirmatively further fair housing and eradicate housing discrimination. This analysis and the Fair Housing Committee recommend that the actions of the *Fair Housing Action Plan* continue to be the driving force behind accomplishing these tasks.

Furthermore, for Newton to remain proactive in affirmatively furthering fair housing, fair housing principles and best practices must be fully institutionalized into the existing structure and across departments, organizations, and boards in the public sector. The public sector must work together to continue to challenge its current programs and policies and integrate such best practices. Working together also means broadening the scope of the efforts toward a regional fair housing approach. The *FY11-15 AI* recommends that communities within the WestMetro HOME Consortium establish consistent fair housing policies and procedures, as well as partake in consolidated research to identify fair housing impediments and take appropriate actions at the regional scale.

Being proactive also means increasing fair housing awareness in the community and within the private sector through education, training, and enforcement efforts. Such efforts will empower consumers by protecting their rights and will enforce the responsibilities of housing producers and providers. The *FY11-15 AI* and the *Fair Housing Action Plan* present insight and strategies for increasing fair housing awareness in the community. Every one of these efforts must be championed in both the public and private sectors to ensure that fair housing best practices are not only sustained, but continue to gain momentum strengthening Newton's commitment and continuing its legacy of being a welcoming, diverse community.

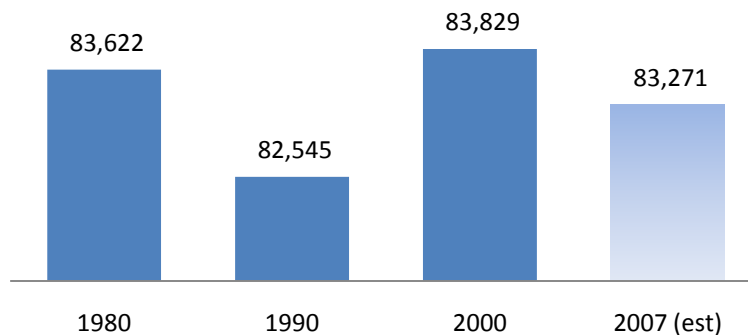
Appendix A: Jurisdictional Background Data

The jurisdictional background data for the *FY11-15 AI* is comprised of relevant indicators useful when analyzing impediments to fair housing choice. These indicators include population and age, economic status, housing costs, housing conditions and demographics focusing on race, ethnicity, familial status and disability. Comprehensive data for Newton and the WestMetro Consortium communities can be found in the *FY11-15 WestMetro HOME Consortium Consolidated Plan*.

Population

Newton is located six miles west of downtown Boston and encompasses 18.2 square miles. The City consists of 14 diverse villages, from the urban Newton Centre to the primarily residential village of Waban. Newton's population peaked in the 1960's when it reached 92,384. According to the U.S. Census, the population of Newton decreased from 83,622 in 1980 to 82,585 in 1990. It increased slightly to 83,829 in 2000 but still remains below what it was in the 1960s. Newton's population estimate for 2007 was 83,271, which represents a decline of 0.7% from 2000.

Total Population Trend in Newton 1980 - 2007



Source: U.S. Census 1980, 1990, 2000, American Community Survey, 2007

Population by age and growth trends

Newton's total population has changed very little from 1990 to 2000, increasing by only 1.5 percent while the population of Massachusetts increased 5.5 percent during the same time. Like Massachusetts, Newton's population increase is largely the result of an increase in children under the age of 18, which has grown 16.3 percent since 1990 and as of the 2000 Census, comprises 21.2 percent of Newton's total population.

In 2000, Newton's median age was 38.7, older than the Massachusetts' median age of 36.5 years and the Boston MSA median of 36.3 years. The comparatively older population of Newton may be a direct result of the City's high housing prices. Data suggests that a scarcity of starter homes has limited the number of younger homeowners aged 25 to 34 and even 35 to 44 years old, skewing the population of homeowners to older adults and the elderly.

Economic status and housing costs

Economic status and housing costs are relevant indicators when analyzing impediments to fair housing choice, as these variables differ for each protected class and dictate access to housing opportunities.⁶⁰ Limited access to housing is especially true for low- and moderate income households, including those with housing subsidies, as this population generally faces more limited housing choice than wealthier households.⁶¹ Limited access to housing can impact the ability to own rather than rent a home, access to community services, transportation, employment opportunities and desirable features (e.g. school systems, hospitals, safety). Limited access to housing due to housing costs can also make finding accommodating housing difficult as well as having the ability to live outside of areas that have a high concentration of poverty.⁶²

Tenure (whether a householder owns or rents his or her home)⁶³ is a relevant indicator of economic status. In Newton, 75 percent of homes are owner-occupied,⁶⁴ which is higher than Middlesex County as a whole (where about 60 percent of homes are owner-occupied). The high rate of homeownership in Newton correlates with the high median household income in Newton.

A slight disparity exists when tenure of householders is broken down by race and ethnicity.⁶⁵ The 2000 Census reported that White householders had the greatest share of both the owner-and-renter occupied units in Newton (92 percent in ownership and 90 percent in rental). Minority householders made up the remaining 8 percent of owner-occupied tenure and about 10 percent of renter-occupied tenure. Fifty-six percent of Hispanic/Latino householders in Newton owned homes, while 44 percent of the Hispanic/Latino householders were renters.

Housing cost is also a major indicator of housing choice. A cost burden exists when a household pays more than 30 percent of gross household income for housing. For example, a cost burden exists when a household pays more than 30 percent of household income on gross rent (e.g., rent and utilities), or on gross mortgage expenses (e.g., principal, interest, taxes and insurance). An extremely high cost burden is 50 percent or more of gross income spent on housing expenses.

The median sales price for single family homes in Newton increased by \$116,000 from 2003 to reach \$761,000 in 2007. Meanwhile, the median sale price for condominium units in Newton was \$450,000 in 2007. When comparing the median sale price of single family homes and the median household income of renters in Newton, a gap becomes apparent. This affordability gap makes the transition from rental to ownership difficult for many renters and thus limits access to

⁶⁰ Massachusetts Department of Housing and Community Development. Analysis of Impediments to Fair Housing Access and Action Steps to Mitigate Impediments. 2007.

⁶¹ Id.

⁶² Id.

⁶³ The U.S. Census Bureau defines "householder" as "the person, or one of the people, in whose name the home is owned, being bought, or rented." "Population" is in turn defined by the U.S. Census Bureau as "all people, male and female, child and adult, living in a given geographic area."

⁶⁴ U.S. Census 2000 summary File 1. Table H11.

⁶⁵ The U.S. Census Bureau does not characterize the category of "Hispanic or Latino" as a race, but rather as an ethnicity.

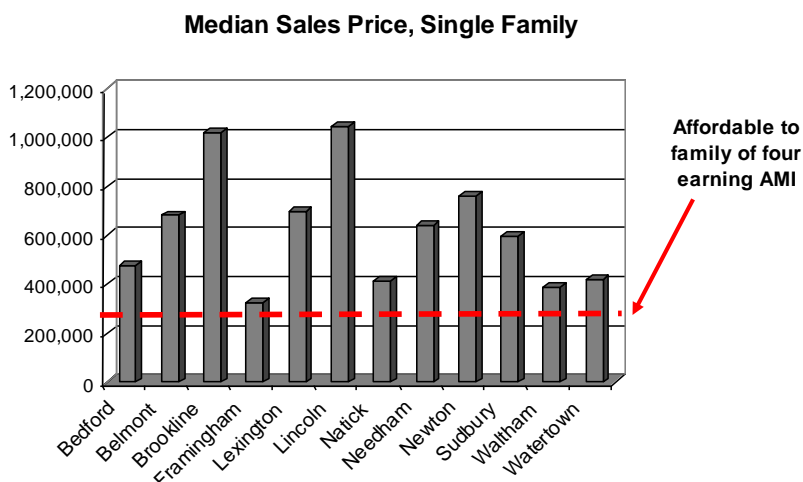
ownership opportunities. The data below suggests that renters earning the Area Median Income (AMI)⁶⁶ for Newton have limited purchasing power in Newton.⁶⁷

Table 9. First-Time Buyer Purchasing Power in Newton

Geography	Affordable to Renter Earning Median Income	Median Sales Price Single Family (2007)	Price Gap	Median Sales Price Condominium (2007)	Price Gap
Newton	\$200,000	\$761,000	\$561,000	\$450,000	\$250,000

Source: The Warren Group, American Community Survey Table B25119; FY11-15 Consolidated Plan

Limited buying power for renters does not only exist in Newton. Data analysis from the *FY11-15 WestMetro HOME Consortium Consolidated Plan* suggests a household of four people earning \$85,800, the 2008 AMI, can afford a single family home priced at \$288,450.⁶⁸ According to 2008 median sales data, a home priced at or below this value would be difficult to find in any of the Consortium communities.



The town of Framingham’s single family home median sales price of \$325,000 is the closest to what homebuyers earning the AMI, for a family of four, can afford.

Newton Rent Prices

Just as median sale prices of homes have increased, Newton’s median gross rent has also increased. In 2000, Newton’s median gross rent was \$1,083. The median gross rent from 2005 – 2007 was \$1,412, or an increase of 30 percent from 2000. Table 10 shows that Newton renters are under this threshold, despite the increase in median rent from 2000 to the median 2005-2007 figure.⁶⁹

⁶⁶ Each year, HUD calculates the estimated AMI for a household of four people. This calculation is based on a complex formula that is adjusted for each state and major metropolitan area in the nation. The AMI is used to determine income limits for various HUD programs.

⁶⁷ This data was derived by using a model that accounts for a 10% downpayment, a 6.28% interest rate, and a fixed 30-year mortgage. The model includes the homeowner expenses of insurance and property tax. Insurance fees are estimated at \$4 for every \$1000 of home value and the 2007 tax rate was used.

⁶⁸ This data was derived by using a model that accounts for a 10% downpayment, a 6.28% interest rate (the average in 2008), and a fixed 30-year mortgage. The model includes the homeowner expenses of insurance and property tax. Insurance fees are estimated at \$4 for every \$1000 of home value and the average 2008 tax rate in the HOME Consortium.

⁶⁹ Census 2000 Tables HCT12, H63 American Community Survey 2005-2007, Tables: B25119, B25064

Table 10. Affordability in the Newton Rental Market

Newton Median Renter Income	Newton Median Rent	Percent of Income Needed for Rent
\$62,381	\$1,412	27%

Condition of housing and lead-based paint hazards

According to the 2000 Census, 90 percent of the housing stock in Newton was built during 1979 or before. Older housing is commonly more expensive than newer units to maintain. Additionally, since lead paint was banned in 1978, older housing presents an obstacle for many families (particularly low- and moderate-income families) looking for housing and the removal of lead paint can often require an expensive remediation process for the owner. Evidence has shown that landlords have denied households the opportunity to live in a unit due to the presence of lead paint in a unit, which is illegal under Massachusetts law.

Fortunately, according to information from the Massachusetts Department of Public Health, the incidence rate of blood lead levels in children in Newton has decreased in all blood lead level categories (moderately-elevated, elevated and lead poisoned). Most significantly, the most current data available shows that the number of children confirmed for the first time with moderately-elevated blood lead levels decreased from ten in 1999 to two in 2009, and children confirmed for the first time with elevated blood lead levels decreased from five in 1999 to two in 2009. The number of lead-poisoned children decreased from two to zero in the same time span.

By comparison, there were 11 communities in Massachusetts determined to be “high risk” for incidences of lead paint poisoning by the Department of Public Health in data collected from July 1, 2004 through June 30, 2009. Statewide, there were 913 cases of children with elevated blood lead levels during this period. Fifty four percent or 497 cases were from a high-risk community.

Table 11. Newton Childhood Lead Poisoning Incidences⁷⁰

Population/incidence rates	1999	2003	2008	2009
Children population (9-48 mos.)	2,825	2,932	2,932	2,932
Children (9-48 mos.) screened	2,524	2,382	2,429	2,528
Percentage	89%	81%	83%	86%
Children population (6-72 mos.)	4,633	5,026	5,026	5,026
Children (6-72 mos.) screened	3,044	2,686	2,712	2,809
Percentage	66%	53%	54%	56%
BLL 15-19	5	2	3	1
BLL 20-24	3	1	0	1
BLL > = 25	2	0	0	0
Total > = 15	10	3	3	2

⁷⁰ Massachusetts Department of Public Health, Childhood Lead Poisoning Screening and Incidence Statistics by Community Year 1999, 2003, and 2008.

Population/incidence rates	1999	2003	2008	2009
Total > = 20	5	1	0	0
Incidence Rate x 1000 children > 20	1.6	0.4	0.0	0.4

Incidence of blood lead levels (BLL)

BLL 15-19	Moderately-elevated
BLL 20-24	Elevated
BLL > = 25	Lead poisoned
BLL > = 15	Number of children confirmed for the first time with blood lead levels > = 15 mcg/dl
BLL > = 20	Number of children confirmed for the first time with blood lead levels > = 20 mcg/dl

Race and Ethnicity

Race and ethnicity are core indicators of fair housing especially when analyzed in relationship with socio-economic determinants of housing choice. In this section, race and ethnicity relationships with poverty rates, income, and homeownership/rental opportunities are examined. Other factors that affect housing choice for persons of different race and ethnicities, such as fair lending practices and instances of housing discrimination, are discussed in Section 5 of this analysis.

To better understand the diversity of the City of Newton, it is helpful to compare the racial breakdown to surrounding communities. The following table compares Newton's race demographics to those of the City of Boston and other communities in the WestMetro HOME Consortium. While Newton is not as racially diverse as Boston or the Consortium as a whole, it is becoming more diverse. Newton's White (non-Hispanic/Latino) decreased from 92.8 percent to 89.4 percent from 1990 to 2000. Additionally, Newton's Asian population has experienced significant growth between in the same timeframe, increasing from 4.6 percent to 7.7 percent over that decade.

Table 12. Racial Composition of Newton and surrounding cities and towns, 2000

Geography	White	Black or African American	American Indian and Alaska Native	Asian	Native Hawaiian and Other Pacific Islander alone	Some other race	Multi-racial
Bedford	92.3%	1.7%	0.2%	5.5%	0.0%	0.3%	1.2%
Belmont	92.5%	1.1%	0.1%	5.8%	0.0%	0.4%	1.4%
Brookline	82.9%	2.8%	0.1%	13.1%	0.0%	1.0%	2.2%
Boston	54.5%	25.3%	0.4%	7.5%	0.1%	7.8%	4.4%
Framingham	82.6%	5.3%	0.2%	5.5%	0.0%	6.5%	3.4%
Lexington	87.4%	1.1%	0.1%	11.1%	0.0%	0.3%	1.4%
Lincoln	89.0%	4.9%	0.4%	4.3%	0.0%	1.4%	2.1%
Natick	93.5%	1.7%	0.1%	3.9%	0.1%	0.8%	1.6%
Needham	95.5%	0.7%	0.0%	3.6%	0.0%	0.3%	0.7%
Newton	89.4%	2.0%	0.1%	7.8%	0.0%	0.7%	1.5%
Sudbury	95.1%	0.8%	0.0%	3.8%	0.0%	0.2%	1.0%
Waltham	84.6%	4.5%	0.2%	7.4%	0.1%	3.3%	1.9%

Watertown	93.2%	1.8%	0.2%	3.9%	0.0%	0.9%	1.9%
Consortium	88.2%	2.7%	0.1%	7.1%	0.0%	1.9%	1.9%
Massachusetts	86.5%	5.5%	0.2%	3.8%	0.0%	3.8%	2.3%

Source: Census 2000, Summary File 1 (SF1) Table P3

According to the 2000 Census, 2.5 percent of households in Newton described themselves as being Hispanic/Latino. Newton’s Hispanic/Latino demographic is within most of the WestMetro HOME Consortium communities listed below, which ranges from 1 to about 11 percent. Framingham and Waltham had the largest share of Hispanic/Latino residents in the Consortium at 10.9 percent and 8.5 percent, respectively.

Table 13. Hispanic/Latino Population in the HOME Consortium, 2000

Geography	# Households	% of Households
Bedford	227	1.8%
Belmont	440	1.8%
Brookline	2,018	3.5%
Framingham	7,265	10.9%
Lexington	428	1.4%
Lincoln	239	3.0%
Natick	635	2.0%
Needham	341	1.2%
Newton	2,111	2.5%
Sudbury	208	1.2%
Waltham	5,031	8.5%
Watertown	883	2.7%
Consortium	19,826	4.4%

Source: Census 2000, Summary File 1 (SF1) Table P4

Race and Ethnicity: poverty and income levels

Data at the state level suggests that a relationship exists between race, ethnicity and poverty; racial and ethnic minorities in Massachusetts are more likely to have an income below the poverty level.⁷¹ In Massachusetts in 1999, 6.4 percent of Whites alone (not Hispanic/Latino) had an income below the poverty level, contrasted with that of 16.2 percent of Asians, 21.2 percent of Black/African Americans, and 29.8 percent of Hispanics/Latinos below the poverty level.⁷²

Newton demographics resemble the state trend, as shown in the chart below.⁷³ In 2000, a total of 3,382 individuals, or 4.3 percent of Newton population, had incomes below the poverty level. Of this 4.3 percent, 3.7 percent were White alone (not Hispanic/Latino), compared to American Indian/Alaskan Native (24.5 percent), Black/African American (about 11 percent) and Asian (about 8 percent).⁷⁴ With respect to ethnicity, 11.7 percent of Hispanic/Latino householders in

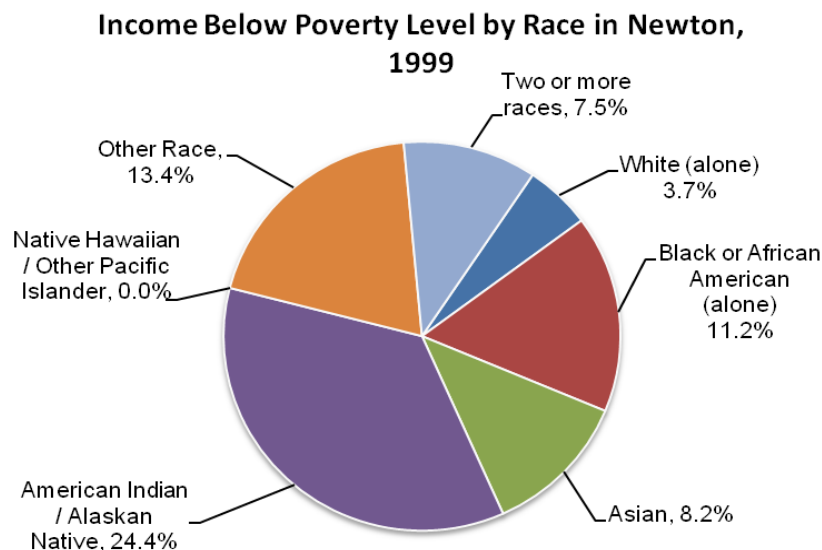
⁷¹ Massachusetts Department of Housing and Community Development. Analysis of Impediments to Fair Housing Access and Action Steps to Mitigate Impediments. 2007.

⁷² Id.

⁷³ Census 2000 Summary File 3 (SF 3) Sample Data P159A-G

⁷⁴ U.S. Census 1999 data

Newton were below the poverty level in 1999, compared to 3.7 percent of Whites alone (not Hispanic/Latino).



Race and Ethnicity: Median and Distributed Income Levels, Ownership and Rental Costs

According to the 2000 Census, the median household income in Newton was \$86,052. The median household incomes were similar for Black/African Americans, Asian and White households. However, a lower median household income was reported by households that were two or more races, and the Other Race categories, as shown in Table 14 below. It should be noted that data was not available for householders identified as Native Hawaiians and other Pacific Islanders.

Table 14. Median Household Income by Race in Newton, 1999	
Black or African American alone	\$ 86,596
White alone	\$ 86,402
Asian alone	\$ 86,122
Two or more races	\$ 67,396
Other race	\$ 60,833
American Indian and Alaska Native	\$ 3,571

Source: Census 2000 Summary File 3 (SF 3) – Sample Data Tables: P152A - G

The 2000 Census also shows a variation of income distribution between races and ethnicity in Newton. American Indian/Alaska Native, Black/African American and households of two or more races had the most households within the lowest range of income (\$34,999 and less). White (alone), Asian (alone) and Black/African American households had the most households with the highest range of income (\$100,000 and up). Table 15 shows the distribution of household income by race and ethnicity in Newton.

Table 15. Household Income Distribution in Newton by Race and Ethnicity, 1999

Income	Race						Ethnicity
	White (alone)	Black/ African American	American Indian or Alaska Native	Asian (alone)	Other Race	Two or more Races	Hispanic / Latino
Less than \$10,000	4%	1%	63%	5%	9%	3%	1%
\$10,000 to \$34,999	15%	24%	37%	11%	14%	23%	13%
\$35,000 to \$49,999	9%	8%	0%	13%	12%	17%	19%
\$50,000 to \$99,999	29%	26%	0%	29%	46%	21%	35%
\$100,000 to \$199,999	28%	34%	0%	33%	16%	19%	25%
\$200,000 or more	15%	7%	0%	9%	3%	17%	7%

Source: Census 2000 Summary File 3 (SF 3) - Sample Data; Tables P151A - H.

Race and Ethnicity: Ownership costs

The median selected monthly owner costs as a percentage of household income in Newton in 1999 showed that racial minority households with a mortgage had slightly higher owner costs than Whites alone, despite having similar median household incomes (with the exception of American Indian/Alaska Native, Other Race and Two or More Races categories). The table below shows this slight disparity. A disparity also existed of ownership costs between Hispanic/Latino households and Whites alone. It should be noted that these disparities may be due to the correlation between owner costs and the median household income for different race and ethnicities as well as the variability within the selected ownership costs as defined by the U.S. Census (e.g., a household may have a home equity loan, rely on a more expensive heating source, and varying insurance costs).⁷⁵ According to the data, American Indian/Alaska Native households were the only population group that was severely cost burdened; paying more than 50 percent of income to owner costs.

Table 16. Median Monthly Owner Costs as Percentage of Household Income by Race and Ethnicity in Newton, 1999

Race	Monthly owner costs as percentage of household income
White	20.4%
Black/African American	21.4%
American Indian / Alaska Native	50+%
Asian	21.8%
Other Race	26.6%
Two or More Races	21.6%
Ethnicity	
Hispanic/Latino	22.8%
White alone (not Hispanic/Latino)	20.3%

Source: Census 2000 Summary File 3 (SF 3) - Sample Data. Tables HCT48A - H

⁷⁵ The U.S. Census defines selected monthly owner costs are the sum of payments for mortgages, deeds of trust, contracts to purchase, or similar debts on the property (including payments for the first mortgage, second mortgage, home equity loans, and other junior mortgages); real estate taxes; fire, hazard, and flood insurance on the property; utilities (electricity, gas, and water and sewer); and fuels (oil, coal, kerosene, wood, etc.). It also includes, where appropriate, the monthly condominium fees or mobile home costs (installment loan payments, personal property taxes, site rent, registration fees, and license fees).

Race and Ethnicity: Rental Costs

The 2000 Census reported that the median gross rent in Newton for White (alone) households was \$1,075, compared to \$1,337 for Asian households, \$952 for Black/African American households, \$800 for households of two or more races and \$1,319 for Hispanic/Latino households.⁷⁶ Median gross rent as a percentage of household income was highest for Asian households (27.8 percent) and Hispanic/Latino households (27.3 percent). The figure was 22.9 percent for White households, 22.3 percent for Black/African American households and 22 percent for two or more race households.⁷⁷ Asian and Hispanic/Latino households' percentage of gross rent to income was higher in Newton than the Middlesex County average (4.1 percent and 0.4 percent higher, respectively), whereas the percentage of gross rent as a percentage of household income was lower for White and Black/African American households in Newton compared to the Middlesex County average (1.6 percent and 4.3 percent lower in Newton, respectively).

Familial status

According to the 2000 Census, the percentage of families with dependent children (<18 years) in Newton was 38.3 percent. With few exceptions, in the Consortium communities at least 30 percent of families with children have dependent children. Throughout the Consortium owner occupied housing consists predominantly of three or more bedrooms, providing ample units suitable for families. Owner-occupied housing stock in Brookline and Watertown is weighted more heavily towards smaller units with zero or two-bedroom units. This correlates with the smaller percentage of families with dependent (<18 years) children in these towns.

Table 17. Families with Children & Suitability of Owner Occupied Units for Family Occupancy, 2005-2007

Community	Renter Units in Sample	% Families with Children <18	% Units by Number of Bedrooms		
			% 0-2BR	% 3BR	% 4+BR
Bedford*	3,706	35.2%	10.3%	50.5%	39.3%
Belmont	6,014	40.9%	16.2%	44.2%	38.8%
Brookline	13,639	27.7%	38.4%	26.7%	34.8%
Framingham	14,927	32.2%	19.8%	47.4%	32.8%
Lexington	9,101	43.0%	13.3%	39.2%	47.5%
Lincoln*	1,715	35.6%	15.3%	26.8%	57.8%
Natick	9,808	36.7%	22.8%	40.7%	36.4%
Needham	8,860	47.0%	11.9%	41.6%	46.6%
Newton	22,499	38.3%	17.5%	36.8%	45.7%
Sudbury*	5,060	52.2%	3.7%	30.1%	66.2%
Waltham	11,135	28.9%	30.0%	46.0%	24.0%
Watertown	7,194	19.2%	42.3%	36.2%	21.4%

*Source: Census 2000 Summary File 3, Tables H7, H42, HCT1

Source: American Community Survey Tables B25012, B25042

⁷⁶ Census 2000. Summary file 3.

⁷⁷ Id. Tables: HCT40A-I.

Large families are defined as a family of five or more people. According to 2005 – 2007 Census estimates, large families make up 7 percent of all households in Newton. Most of Newton’s large families own a home, with the remainder (about 11 percent) renting.

Low-income large families need housing that is affordable and suitable for the size and composition of their households. Due to the extraordinarily high cost of housing throughout the Boston metropolitan area, these needs apply to many middle-income families as well, but low- and moderate- income families are particularly vulnerable to the region’s shortage of housing choices. Most large families require lead-free housing because of the presence of young children. This necessity can limit housing choice. Consortium-wide, more than half of extremely low, low- and moderate-income large families are renters, while in Newton the figure was about 34 percent.

Table 18. Geographic Distribution of Extremely Low, Low- and Moderate-Income Large Families by Tenure, 2000

Geography	Number of Large Family Households ≤ 80 AMI	% of Large Family Households ≤ 80 AMI of Renters
Bedford	33	24.2%
Belmont	93	50.5%
Brookline	155	55.5%
Framingham	746	74.5%
Lexington	94	19.1%
Lincoln	89	100.0%
Natick	170	24.7%
Needham	88	50.0%
Newton	292	34.2%
Sudbury	54	7.4%
Waltham	530	57.2%
Watertown	230	48.3%
Consortium	2,574	54.7%

Source: HUD, CHAS 2000 Data

Persons with Disabilities

A disability is defined as a long-term impairment of one or more major life functions, such as sight, hearing or mobility. The 2000 Census reported that 3,394 people with physical disabilities, age 16 and over, live in the City of Newton, representing four percent of the City’s population. Census estimates (2005-2007) point to an increase in the number of Newton residents age 16 and over with a physical disability to 3,967 people, or 4.6 percent of the population.

Table 19. Disability Population by Age Group, 2005-2007

Geography	Population Over 5	% with Disability	Percent with Disability by Age Group				
			5-15	16-20	21-64	65-74	75+
Bedford*	11,141	12.5%	4.8%	4.5%	10.6%	14.7%	46.9%
Belmont	22,373	8.4%	4.7%	7.6%	5.4%	13.5%	34.5%
Brookline	54,769	9.5%	4.4%	8.3%	6.2%	18.5%	45.9%
Framingham	57,646	13.5%	5.0%	7.2%	10.9%	28.8%	50.3%
Lexington	28,154	7.2%	4.2%	7.7%	3.7%	11.7%	31.6%
Lincoln*	6,529	9.8%	6.6%	19.5%	7.6%	10.7%	34.6%
Natick	29,890	10.1%	4.9%	13.0%	6.7%	25.3%	38.1%
Needham	26,032	9.2%	4.6%	2.9%	5.3%	24.3%	40.1%
Newton	86,213	8.6%	4.7%	3.2%	5.3%	17.9%	44.7%
Sudbury*	15,158	9.9%	4.6%	11.9%	9.9%	11.1%	45.0%
Waltham	54,814	11.1%	7.0%	3.6%	9.7%	19.3%	39.1%
Watertown	28,560	13.1%	8.5%	6.2%	9.0%	19.9%	45.1%

*Source: Census 2000, Summary File 3, Table P42;

Source: American Community Survey 2005-2007, Table S1801

Measured on the basis of households, more than 20,000 renter and homeowner households in the Consortium include a person with a disability, and according to HUD, 36 percent have housing problems. Table 20 provides a consolidated report of CHAS 2000 data for the Consortium's 12 member communities. The data include renter and homeowner households in which at least one family member has a long-lasting condition that substantially impedes basic physical activity, such as walking or climbing stairs, and/or a physical, mental, or emotional condition that interferes with personal self-care.

Table 20. Housing Needs of Disability Households in the WestMetro HOME Consortium

Household Income, Housing Problem	Renters	Owners
Household Income <=50% MFI	5,028	2,609
Household Income <=30% MFI	3,420	1,042
<i>% with any housing problems</i>	53.4%	78.7%
Household Income >30 to <=50% MFI	1,608	1,567
<i>% with any housing problems</i>	66.0%	57.8%
Household Income >50 to <=80% MFI	1,197	1,666
<i>% with any housing problems</i>	46.4%	34.8%
Household Income >80% MFI	2,534	7,154
<i>% with any housing problems</i>	22.6%	11.9%
Total Households	8,759	11,429
<i>% with any housing problems</i>	45.9%	28.4%

Source: HUD CHAS Data

In Newton and throughout the Consortium, frail elderly (75+) are more likely than elderly (65+) persons to have a disability. The ACS (2005-2007) reports on disabilities by type. The highest responses by type include: sensory, physical, and mental disabilities. The most common disability Consortium-wide and Newton in the population 65 and older is a physical disability.

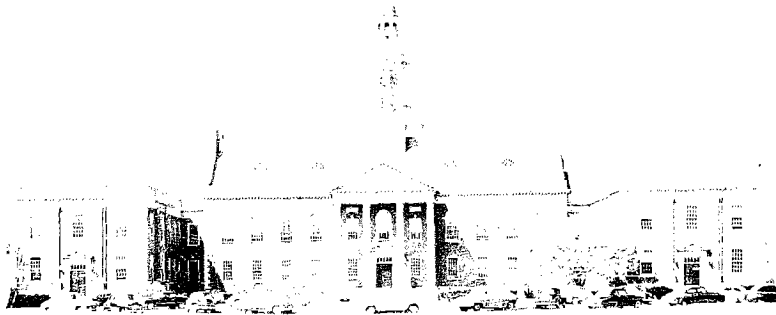
Table 21. Disability by Type for the Elderly Population

Community	Total Population	With a Disability	Sensory Disability	Physical Disability	Mental Disability
Bedford*	1,841	29.9%	0.0%	0.0%	21.2%
Belmont	3,462	24.5%	10.3%	14.2%	3.2%
Brookline	7,431	31.5%	14.9%	21.7%	14.9%
Framingham	7,469	39.0%	16.5%	31.1%	11.1%
Lexington	4,965	21.3%	9.2%	14.9%	5.8%
Lincoln*	898	21.2%	0.0%	100.0%	19.3%
Natick	4,184	30.8%	12.4%	26.3%	8.4%
Needham	4,051	32.6%	17.8%	24.1%	12.3%
Newton	11,614	32.2%	13.7%	24.5%	10.1%
Sudbury*	1,433	22.0%	0.0%	100.0%	21.9%
Waltham	6,695	28.1%	9.4%	23.4%	6.2%
Watertown	4,651	35.4%	8.7%	29.0%	6.0%

*Source: Census 2000 Summary File 3, Table 41; Source: American Community Survey 2005-2007 Estimate, Table B18002, S1801

Commonwealth of Massachusetts

City of Newton



I HEREBY ESTABLISH A NEWTON FAIR HOUSING COMMITTEE whose charge shall be to:

Promote, educate and advocate for fair housing activities in the community;

Assist in and advise on the coordination of the fair housing-related activities of key City boards and departments (such as the Newton Housing Partnership, the Newton Housing Authority, the Community Preservation Committee, the Planning and Development Board, the Planning and Development Department and the Inspectional Services Department) so 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 recommend means towards accomplishing 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 and advise the City in meeting its obligations under the City's Analysis of Impediments to Fair Housing Choice and accomplishing its fair housing planning objectives (including implementing the Fair Housing Action Plan);

Assist and advise the City to help ensure that fair housing objectives are identified and integrated across City departments;

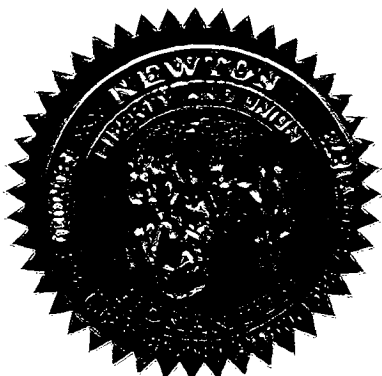
Assist and advise the City in seeking financial resources and establishing outside partnerships to further fair housing objectives; and

Link the work of the City to regional fair housing activities.

I HEREBY APPOINT eleven members to the NEWTON FAIR HOUSING COMMITTEE who shall serve for terms of three years or until their successors shall take office. The initial appointments shall be for staggered terms as follows: three appointees shall serve for a one year term; four appointees shall serve for a two year term; and four appointees shall serve for a three year term. Members shall be residents of the city or representatives of city based institutions, organizations, and businesses that serve the housing needs of Newton residents.

The new NEWTON FAIR HOUSING COMMITTEE shall be staffed by the Planning and Development Department and, as proposed in the *Fair Housing Action Plan*, shall support Newton's efforts consistent with that Plan to be a diverse, welcoming community free of discrimination.

February 9, 2009



David B. Cohen, Mayor

HEALTH AND HUMAN SERVICES*

ARTICLE V. HUMAN RIGHTS COMMISSION AND ADVISORY COUNCIL

Sec. 12-50. Policy of the city.

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

(b) *Policy of the city regarding housing practices:*

- (1) It is the policy of the city to see that each person regardless of race, color, religious creed, national origin, sex, age, genetic information, disability, ancestry, marital status, family status, veteran status or membership in the armed forces of the United States, sexual orientation, or status as a person who is a recipient of federal, state, or local public assistance or who is a tenant receiving federal, state, or local housing subsidies including rental assistance or rental supplements, shall have equal opportunity in or access to housing or housing accommodations offered for sale, lease or rental, including publicly assisted housing accommodations, multiple dwellings, contiguously located housing and other covered housing accommodations within the meaning of M.G.L. Chapter 151B (the Massachusetts Anti-Discrimination Law) and 42 U.S.C. § 3601, *et. seq.* (the Federal Fair Housing Act, as amended).
- (2) It shall be an unlawful practice for any person to engage in any act of discrimination with respect to the sale, lease or rental of housing or housing accommodations in violation of the foregoing policy. For purposes of this paragraph (b), the term “unlawful practice” with respect to the sale, lease or rental of housing or housing accommodations shall have the same meaning as set forth in M.G.L. Chapter 151B and 42 U.S.C. § 3601, *et. seq.* (Rev. Ords. 1973, § 2-282; Ord. No. 55, 2-18-75; Ord. No. 79, 7-28-75; Ord. No. 248, 12-5-77; Ord. No. S-140, 12-16-85; Ord. No. X-175, 05-26-05; Ord. No. X-201, 04-03-06)

Sec. 12-51. Establishment of commission; membership, term, officers.

(a) There is hereby established a municipal board to be known as the human rights commission of the city (hereinafter referred to as the commission). The commission shall consist of nine (9) members appointed by the mayor with the approval of the board of aldermen for a term of three (3) years. The members of the commission shall be citizens of the city and shall, so far as practicable, be so selected as to provide representation from the fields of religion, education, and behavioral sciences, industry, law, commerce and labor.

(b) The mayor, with the approval of the board of aldermen, shall appoint each successor to former members of the community relations commission to a term of three (3) years. Appointments to unexpired terms shall not be counted as a term for the person appointed. The members of the commission shall serve without compensation. The commission shall annually elect one of its members as chairperson, and may elect other

***Cross references**—Animals and fowl, Ch. 3; recycling and trash, Ch. 11; zones of quiet around hospitals established, § 19-4; taxicabs carrying persons with contagious diseases prohibited, § 19-309

State law references—Health generally, G.L. c. 111; crimes against public health, G.L. c. 270

officers as it may deem necessary, with the approval of the mayor. The commission shall meet at least eleven (11) times a year at regular intervals. The commissioner of the department of health and human services shall be given notice of said meetings and he/she or his/her designee have the right to be present. Five members of the commission shall constitute a quorum and a majority of those present shall be sufficient for any action taken by the commission. (Rev. Ords. 1973, § 2-283; Rev. Ords. 2001, § 14-34; Ord. No. 55, 2-18-75; Ord. No. 79, 7-28-75; Ord. No. S-140, 12-16-85; Ord. No. X-175, 05-26-05)

Cross reference—Regulations governing appointment to and service on commissions and committees, § 2-8

Editor's note—As amended in 1975, this section provided for members of the then community relations commission to continue as members of the new human rights commission for the remainder of their terms.

Sec. 12-52. Executive officer.

There shall be an executive director of the commission. The commissioner of health and human services appointed under section 12-19 or his/her designee shall serve as the executive director, and shall coordinate and perform the administrative duties as determined by the commission. (Rev. Ords. 1973, § 2-284; Rev. Ords. 2001, § 14-35; Ord. No. 55, 2-18-75; Ord. No. 79, 7-28-75; Ord. No. X-175, 05-26-05)

Sec. 12-53. Function, powers, duties.

The function of the commission shall be to implement the policy of this article by the exercise of the following powers and duties:

(a) To enlist the cooperation of the various racial, religious and ethnic groups, civic and community organizations, labor organizations, fraternal and benevolent organizations, and other groups in eliminating unlawful discrimination and showing the need for mutual self-respect and the achievement of harmonious intergroup relationships in the city.

(b)(1) To initiate investigations into the existence of unlawful discrimination in the city which may deny or tend to deny equal access to or opportunity in housing, employment, education, and public accommodations, services and facilities to a person or group because of his/her race, color, sex, age, handicap, religious creed, national origin or ancestry or sexual preference and in connection therewith to hold hearings.

(2) To subpoena witnesses, compel their attendance, administer oaths, serve written interrogatories, take testimony of any person under oath, and require the production of any evidence and/or answers relating to any matter in question or under investigation before the commission. The powers enumerated in this subparagraph (b)(2) may be exercised by a vote of two-thirds (2/3) of the members of the commission only, and in accordance with G.L. Chapter 233, Sections 8 through 11.

(c) To attempt by mediation to resolve any matter over which it has jurisdiction and after investigation of any matter, not resolved by mediation, to make written report of its findings and recommendations to the mayor on any matter within his/her jurisdiction for his/her review and for the implementation by him/her of such of the recommendations of the commission as the mayor deems justified; or, similarly, to the school committee on any matter within its jurisdiction, or to the Massachusetts Commission Against Discrimination (MCAD) on any matter within its jurisdiction; or to any court or other governmental agency having jurisdiction over the matter in question, and in all cases, urging, and using its best efforts to bring about, compliance with its recommendations.

(d) To issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination in housing, employment, education, and public accommodations, services, and facilities to a person or group because of his/her race, color, religious creed, national origin, sex, age, handicap, ancestry or sexual preference.

(e) To adopt, promulgate, amend and rescind rules and regulations to carry out the provisions of this article,

and the policies and practice of the commission in connection therewith.

(f) To render to the mayor and board of aldermen a full written report of its activities and of its recommendations, not less than once a year.

(g) To obtain upon request and utilize the services of all municipal departments and agencies, unless prohibited by law.

(h) The commission may expend, with the approval of the mayor, such funds as are appropriated for the aforementioned purposes. The commission shall annually prepare an operating budget in a timely manner to permit formulation of an overall department of health and human services budget. (Rev. Ords. 1973, § 2-285; Rev. Ords. 2001, § 14-37; Ord. No. 55, 2-18-75; Ord. No. 79, 7-28-75; Ord. No. 248, 12-5-77; Ord. No. S-140, 12-16-85; Ord. No. X-175, 05-26-05)

Sec. 12-54. Advisory council.

(a) *Establishment, appointment, term, meetings.* There is hereby established an unpaid advisory council to the commission consisting of twenty (20) members who shall be appointed by the mayor for terms of two (2) years. Six (6) of the above said members shall be representative of:

- (1) Law enforcement;
- (2) School department;
- (3) Clergy;
- (4) Fair housing or other appropriate civil rights organization;
- (5) Labor union;
- (6) Real estate.

Appointments to unexpired terms shall not be counted as a term for the person appointed. The advisory council shall meet at least four (4) times a year and shall be given notice of all commission meetings. The commissioner of health and human services shall be given notice of advisory council meetings and he/she or his/her designee shall have the right to be present.

(b) *Functions and duties.* It shall be the function of the council to assist and advise the commission in the carrying out of its powers and duties, to serve on such subcommittees as may be created from time to time by the commission, and to aid the commission in obtaining the support of the citizens of Newton in effectuating the policy of this article. The advisory council shall annually elect one of its members as chairperson and may elect other officers as it deems necessary, with the approval of the mayor. (Rev. Ords. 1973, § 2-286; Rev. Ords. 2001, § 14-38; Ord. No. 55, 2-18-75; Ord. No. 70, 7-28-75; Ord. No. S-140, 12-16-85; Ord. No. V-290, 3-20-00; Ord. No. X-175, 05-26-05)

Editor's note—As amended in 1975, this section provided for members of the then community relations advisory board to continue as members of the new human rights commission advisory council for the remainder of their terms.

Sec. 12-55. Construction of article.

The provisions of this article shall be construed liberally for the accomplishment of the purposes thereof, and any ordinance inconsistent with any provision hereof shall not apply, but nothing contained in this article shall be interpreted to contravene the General Laws of the Commonwealth. (Rev. Ords. 1973, § 2-287; Rev. Ords. 2001, § 14-39; Ord. No. 55, 2-18-75; Ord. No. 70, 7-28-75; Ord. No. X-175, 05-26-05)

Secs. 12-56—12-59. Reserved.

**CITY OF NEWTON, MASSACHUSETTS HUMAN RIGHTS COMMISSION
RULES OF PROCEDURE
FOR COMPLAINTS OF UNLAWFUL PRACTICES**

6/22/07

Section 1.0 - Title and Purpose

1.1 Title - These rules shall be known and cited as the "Rules of Procedure of the Human Rights Commission of the City of Newton."

1.2 Authority - These rules are adopted pursuant to the authority granted to the commission by Section 12-53(e) of the Ordinance.

1.3 Purpose - These rules are for the purpose of regulating the filing and investigation of complaints of an unlawful practice or unlawful housing practice, including the issuance of subpoenas and the conduct of hearings before the commission.

Section 2.0 - Definitions

2.1 "Ordinance" - Article IV, Chapter 12, Sections 12-50 to 55 of the 2001 Revised Ordinances of the City of Newton, as amended by Ordinance No. X-175, March 26, 2005 and Ordinance No. X-201, April 3, 2006.

2.2 "Commission" - The Human Rights Commission of the City of Newton as established by Section 12-51 of the Ordinance.

2.3 "Unlawful Practice" - shall include any one of the following:

a) denial of equal access to, or discrimination in, employment, education, public accommodations or public services, where such denial or discrimination against either an individual or a group is based on race, color, religious creed, national origin, sex, age, disability, ancestry or sexual orientation; or

b) violation of the enjoyment and exercise by any person or group of his/her or its civil rights;

2.4 "Unlawful housing practice" shall include: discrimination with respect to the sale, lease or rental of housing or housing accommodations where such discrimination against an individual or a group is based on race, color, religious creed, national origin, sex, age, genetic information, disability, ancestry, marital status, family

status, veteran status or membership in the armed forces of the United States, sexual orientation, or status as a person who is a recipient of federal, state, or local public assistance or who is a tenant receiving federal, state or local housing subsidies including rental assistance or rental supplements. "Unlawful housing practice" shall have the same meaning with respect to the sale, lease or rental of housing or housing accommodations as set forth in either M.G.L. Chapter 151B or 42 U.S.C. § 3601 *et.seq.*;

2.5 "Associate Director" - The associate director for housing and community development, or his/her designee.

2.6 "Executive Director" - The commissioner of health and human services pursuant to Section 12-52 of the Ordinance, or his/her designee.

2.7 "Grievance Committee" - A subcommittee of the human rights commission comprised of commissioners and advisory board members.

2.8 "Person" - As used in these rules shall mean any natural person or legal entity.

Section 3.0 - Complaint

Procedures 3.1 Filing of a Complaint

a) Any person or persons claiming to be aggrieved by an alleged unlawful practice or unlawful housing practice ("the complainant") may, by himself/herself or by his/her attorney, make, sign and file with the commission a complaint in writing on a form provided by the commission, which shall identify the person or persons alleged to have committed the unlawful practice or unlawful housing practice ("the respondent") and which shall set forth the particulars thereof and contain such other information as may be required by the commission. The complaint shall indicate that the respondent will receive a copy of the complaint.

b) The executive director, whenever he or she has reasonable cause for believing that any person has been engaged, or is engaging, in an unlawful practice or unlawful housing practice, may issue a complaint and file it with the commission.

c) Any complaint filed pursuant to this section must be so filed within 300 days of the occurrence of the alleged unlawful practice or unlawful housing practice.

d) Where a complaint claiming an unlawful housing practice has been filed, a fair housing complaint intake form

shall promptly be filled out by the associate director together with the complainant. If the complaint is determined to involve housing discrimination and no immediate court action or referral for testing is needed, the complaint shall be processed as set forth in these rules. All timing requirements shall run from the date that the complaint intake form is signed by the complainant.

e) If the claim made in a complaint falls under both an unlawful housing practice and an unlawful practice, the associate director and the executive director shall consult and determine which of their offices shall process the complaint.

f) Within ten (10) days after the filing of a written complaint with the commission, the executive director shall cause a copy thereof to be mailed by regular and certified mail to the respondent together with a request that the respondent contact the executive director or the staff in an effort to resolve the complaint and/or to aid in the investigation thereof. The notification shall also contain the following information: 1) the respondent has a right to file a written answer; 2) to be considered in the initial investigation, an answer must be filed within fourteen (14) days of receipt of the complaint; and 3) failure of the respondent to file an answer shall not be construed to deny him/her the right to defend at any later proceeding.

3.2 Investigation of a Complaint - The executive director, or in the case of an unlawful housing practice, the associate director, shall conduct a preliminary investigation of the alleged unlawful practice or unlawful housing practice. The investigation shall include verification of names and addresses of the complainant, respondent and witnesses, if any. The executive director or associate director shall conduct informal interview by telephone or in person with the parties to the complaint including witnesses where possible. The investigation process as described above shall be completed and the findings thereof presented at a complaint evaluation conference of the grievance committee to be held within thirty (30) days of the filing of the complaint, unless it is impracticable to do so, and the parties are notified in writing of the delay and its reasons.

Section 4.0 - Response by Commission

4.1 Complaint Evaluation Conference - Based upon the findings of the preliminary investigation as described above, and on any further investigation the grievance committee deems necessary, the grievance committee shall make one of the following determinations: 1) to dismiss the complaint; 2) to refer the complaint to another agency or adjudicatory body; 3) to refer the dispute to mediation or to otherwise attempt an informal resolution of the complaint; or 4) to hold a hearing of the alleged unlawful practice or unlawful housing practice

before the commission. In the event of a decision by the grievance committee to hold a hearing on the complaint, said committee shall direct the executive director to notify by letter the complainant, respondent and any witnesses as to the time, date and place of the hearing.

4.2 Subpoenas - At least thirty (30) days prior to a hearing, the responses by the complainant, respondent, and witnesses to the notice of hearing and request for voluntary appearance pursuant to 4.1 must be received. At least thirty (30) days prior to a hearing, any requests by the complainant or respondent to the commission for the issuance of additional subpoenas must be received. Upon a determination by the executive director and/or the grievance committee that any parties to the complaint and any witnesses will refuse to appear voluntarily at the hearing, the commission, by a two-thirds vote of the commission members, may issue subpoenas to such persons compelling their attendance before the commission hearing. The commission may, in its discretion, issue written interrogatories to the respondent or the complainant, which shall be answerable no later than fifteen (15) days before the hearing.

4.3 Hearing - The respondent may, until no later than fifteen (15) days before the hearing, file a written answer to the complaint. The commission may permit reasonable amendment to any complaint or answer at any time. The complainant and respondent, with or without counsel, may submit evidence, examine witnesses and be fully heard. The commission may compel the attendance of witnesses and the production of any evidence relevant and material to the subject matter of the complaint by a two-thirds vote of the commission members. Any endeavors or negotiations for conciliation shall not be received in evidence. The testimony taken at such hearing shall be under oath, administered by the chairperson or the presiding commissioner. All hearings shall be recorded.

4.4 Conduct of Hearing - The hearing shall be conducted as follows:

a) The chairperson of the commission shall preside or appoint a "presiding commissioner" for each hearing, and the chairperson or presiding commissioner shall moderate the hearing and determine the issue of the admissibility of any evidence and other related matters during the hearing.

b) Complainant, respondent and all witnesses shall be sworn by the chairperson of the commission or the presiding commissioner.

c) The complainant, either in narrative form and/or upon questioning by his/her counsel or other representative shall relate the incident complained of to the commission.

d) The respondent or his/her counsel or representative shall have the right to cross-examine the complainant.

e) Witnesses supporting the complainant's complaint shall then be heard and after the completion of direct testimony shall be subject to cross-examination by the respondent or his/her counsel.

f) The respondent and his/her witnesses shall then be heard and all shall be subject to cross-examination by the complainant or his/her counsel.

g) At any time during the hearing any commission member may question any person appearing.

h) The rules of evidence shall not control the taking of testimony or the giving of evidence at the hearing. In the event any person refuses to answer a particular question, the hearing will not be adjourned but the question shall be noted. If, in the opinion of the majority of the commissioners present, a person at any hearing shall have committed perjury, then the commission may refer the matter to the District Attorney for Middlesex County for any such action he or she may deem appropriate.

i) At any hearing, the commission may adjourn or continue the same, and no new written notice need be given to any person previously notified of said hearing.

j) All hearings shall be governed by the Massachusetts Open Meeting Law, G.L. c. 39 §23B.

4.5 Decision - If, upon all the evidence, a majority of the commission finds that a respondent has not engaged in any alleged unlawful practice or unlawful housing practice, it shall state its findings of fact and shall issue an order dismissing the complaint and shall notify the complainant and respondent of such decision. If, upon all the evidence, the commission finds that a respondent has engaged in any unlawful practice or unlawful housing practice, it shall state its findings of fact and its recommendation of any action the respondent should take and shall notify the complainant and respondent of such findings and decision. A copy of the decision shall be filed with the city clerk and made public by the commission not sooner than forty-eight (48) hours after it is mailed to the complainant and respondent. In the event a respondent fails to take such action within such time as the commission may establish, the commission shall then make such recommendation as it deems advisable, in accordance with section 12-53(c) of the Ordinance. Such recommendation may include referral to the Massachusetts Commission Against Discrimination or other government agency with enforcement powers having jurisdiction, and the commission shall notify the complainant and respondent of any such referral.



www.newtonhumanrights.org

Housing DISCRIMINATION COMPLAINT FORM

Instructions: (Please type or print) Read this form carefully. Try to answer all questions. If you do not know the answer or a question does not apply to you, leave the space blank. If you need help filling out this form, please call and leave a message on the Fair Housing Discrimination line 617-796-1283. Your form should be signed and dated.

Name of Complainant: _____

Current Street Address: _____

City: _____ State: _____ ZIP: _____

Daytime Phone Number(s): _____ Email Address: _____

Name of contact person, if someone is assisting the Complainant: _____

Mailing Address: _____

Phone: (_____) _____ Email: _____

1. What happened to you?

How were you discriminated against? For example, were you denied housing because of your religion? Were you denied a mortgage loan because of your race? Were you turned down for an apartment because you have young children?

2. Why do you believe you have been a victim of housing discrimination?

Is it because of your (please circle all that you believe apply):

- Race
- Color
- Religious creed
- National origin
- Sex
- Age
- Genetic information
- Disability
- Ancestry
- Marital status
- Family status (families with children under 18)
- Veteran status or membership in the armed forces of the United States
- Sexual orientation
- Status as a person who is a recipient of federal, state, or local public assistance or who is a tenant receiving federal, state or local housing subsidies including rental assistance or rental supplement

3. Whom do you believe discriminated against you?

For example, is the person a landlord, owner, bank, real estate agent, broker, company, public official, or organization?

Identify whom you believe discriminated against you.

Name: _____

Position, if known: _____

Address: _____

4. Where did the alleged act of discrimination occur?

For example, was it at a rental unit? Single-family home? Public or assisted housing? A bank or other lending institution? Newspaper advertisement?

Please provide the full address:

5. When did the most recent act of discrimination occur?

Date: _____

Is the alleged discrimination continuing or ongoing? Yes _____ No _____

Explain briefly.

6. Have you filed your complaint with a federal, state or local anti-discrimination agency. If so, please describe. Please note that complaints of housing discrimination must be filed within 300 days of the most recent violation for the Massachusetts Commission Against Discrimination (MCAD), and within one year for the United States Department of Housing and Urban Development (HUD).

7. Have you filed your complaint about this with any federal or state court? If so, please describe.

Signature of Complainant

Date

Please return this form to: Newton Human Rights Commission at address below.

FOR COMMISSION USE (this section does not need to be translated):

DATE RECEIVED:

REFERRAL MADE:

ACTION TAKEN:

RESOLUTION:



Setti D. Warren
Mayor

City of Newton Fair Housing Intake Form

Intake Date: _____

Intake Number: _____

Client Information:

Name: _____

Address: _____

City: _____ State: _____ Zip: _____ Fax: (____) _____

Phones: Home (____) _____ Work (____) _____ Cell (____) _____

Name of contact person, if someone is assisting the Client: _____

Mailing Address: _____

Phone: (____) _____ Email: _____

Under what basis is the client claiming discrimination? Please check all that apply & fill-in client information in corresponding spaces:

- Race _____
- Ancestry _____
- National origin _____
- Disability _____
- Age (excludes minors)* _____
- Source of income* _____
- Family status: # + ages of children _____
- Color _____
- Sex _____
- Marital status* _____
- Religion _____
- Sexual orientation* _____
- Military history* _____

** denotes protected class only in MA*

Note: Race includes White, Black/African American, Asian, American Indian/Alaska Native, Native Hawaiian/Other Pacific Islander, American Indian/Alaska Native and White, Asian and White, Black/African American and White, American Indian/Alaska Native and Black or African American and Other Multi Racial.

What type of transaction were they involved in?

- Rental Sales Lending Insurance Advertising Harassment Zoning
- Other (What? _____)

Is this an owner occupied two-family home? Yes No

Is the property housing that's specifically intended and operated for people 55 or older? Yes No

If the answer to either of these questions is yes, then the property may be exempt under the Fair Housing Act.

Is behavior alleged by client prohibited under the Act? Please check all that apply:

- Refusal to rent or sell
- Refusal to accept bona fide offer
- Refusal to negotiate for rental or sale
- Impose different prices for sale or rental
- Use different qualifications standards or procedures
- Fail to provide reasonable accommodation
- Assess different fees (for example: additional security charge, finder's fee, etc that have not been asked of others)
- OTHER: _____
- Evict tenant
- Discriminate in terms and conditions
- Discriminate in provisions of services or facilities
- Represent that dwelling is not available when it is
- Fail to provide maintenance on unit
- Fail to permit or provide reasonable modification

What is the most recent date of the discriminatory action? (If the action is continuous, give the date of the last act.) Date: _____

Is it within the statute of limitations? Yes No

For federal violations, complaint must be filed with HUD within one year of most recent allegation.

For state violations, complaint must be filed with Massachusetts Commission Against Discrimination (MCAD) within 300 days of most recent allegation.

Does client have documentation of discriminatory action? Yes No Please provide documentation.

Does client want unit and is unit still available? Yes No

If yes, refer to FHCGB immediately for testing and possible Temporary Restraining Order.

What is the address of the housing in question? _____

Please use additional paper if needed for any further documentation: _____

Respondent(s) [the person(s) who committed the alleged act of discrimination] information:

Types (landlord, property manager, realtor, etc): _____

Name: _____

Company: _____ Position: _____

Address: _____

Phone: (_____) _____

Does the City of Newton have permission to forward this form to the Fair Housing Center of Greater Boston, MCAD, or HUD, if appropriate? Yes No

Client Signature: _____ **Date:** _____

City staff filling out form completes:

Intake Official: _____ Phone: (_____) _____

Title & Office: _____ Email: _____

Intake Official Signature: _____ **Date:** _____

If this form will be forwarded to MCAD or HUD for processing, fill out the following section:

I affirm that I have read this Complaint and that its contents are true and accurate to the best of my knowledge and belief.

Signed under the pains and penalties of perjury this _____ day of _____, 20____

(Signature of Complainant)

STATUS (staff check-off accordingly)

- Fair Housing Complaint, sent to: Fair Housing Center G/B (circle: FAX or Email) Date: _____
- Fair Housing Complaint, forwarded to Newton Human Rights Comm. for processing Date: _____
- Fair Housing Complaint, forwarded, with signature and affirmation, to MCAD or HUD
(circle which agency it is sent to) Date: _____
- Not Fair Housing Complaint, redirected to: _____ Date: _____