

CITY OF NEWTON, MASSACHUSETTS
Newton Fair Housing Committee

FAIR HOUSING IN THE NEWTON HOUSING STRATEGY

October 6, 2016

In June, 2016 Mayor Setti Warren distributed the new report “Housing Needs Analysis and Strategic Recommendations,” prepared for the City by RKG Associates as a key element in the City’s “Newton Leads 2040 Housing Strategy.” As requested and approved by the Newton Fair Housing Committee, the following was written by Sheila H. Mondshein, member and former chairperson of this Committee.

I. GENERAL OVERVIEW

The “Housing Needs Analysis and Strategic Recommendations” report (“Housing Report”) recently issued by RKG Associates makes a significant contribution to an understanding of the current residential housing market in Newton and issues of its affordability. That report underlines the fact that the continuing growth of housing market imbalance in Newton and regionally “has eroded the City’s economic diversity”, which at least in the past has been a core value of the City, along with racial and cultural diversity. (See page 49 of the report); see also page 63, which speaks of Newton as having an environment of “de facto economic segregation”.) In addition, the report observes that racial and ethnic diversity within Newton, as a percentage of the total population, remains below that of the Regional Study Area. See Exhibit A (additional data items that would enhance an understanding of the fair housing dimensions of current Newton housing).

In the view of the Newton Fair Housing Committee (NFHC), it is also important to address the possible impact of housing discrimination or failure to follow fair housing requirements on the features of the Newton residential housing market.

Fair housing testing audits of Newton real estate agencies and management companies were conducted by the Fair Housing Center of Greater Boston in 2005 and 2006. Those audits found that about 46% of the time, the testers who were African-American, or of Latino or Caribbean national origin, or had children under 18, or held Section 8 vouchers were treated differently from the non-protected class testers in their searches for housing. This apparent discrimination took the form, for example, of less access to rental or sales units, or different terms and conditions provided. In 2006, the Disability Law Center performed testing audits involving persons with a physical or mental disability. That Center found that Newton realtors and landlords in private non-subsidized housing treated testers with a disability differently about 54% of the time. That apparent discrimination took the form of untruthful representations, steering, different terms and conditions, and failure to provide reasonable accommodation as required. Most recently, from 2010 to 2015, the Fair Housing Center of Greater Boston again conducted testing of Newton landlords and real estate agents, and determined that the incidence of different treatment based on race or having a child under 18 was still high, 56%.

The Housing Report lists several Housing Strategy Principles to guide the City's implementation decisions on housing. An additional significant factor should be the need to follow fair housing principles as they may relate to the creation and maintenance of housing opportunities in Newton which are free from discrimination. These principles are designed to protect various classes of persons seeking housing in Newton, whether or not they already reside there, and they potentially cover any decision or action relating to housing opportunities taken by Newton housing owners, landlords, managers, and realtors, as well as City officials and decision makers who are involved in housing matters. The grounds of protection are race, color, national origin, religion, sex, sexual orientation, gender identity or expression, marital status, physical or mental disability, familial status (having a child under 18), age, receipt of public assistance (including rental vouchers), military status, or genetic information. Based on the foregoing, the NFHC recommends the City's adoption of an additional Housing Strategy Principle such as this:

"FOLLOW FAIR HOUSING REQUIREMENTS

"Housing opportunities made available should follow the principles of non-discrimination and, where applicable, the affirmative duty to further fair housing. Persons who seek or secure housing in Newton should not be denied or limited in their access to or enjoyment of housing on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity or expression, marital status, physical or mental disability, familial status (having a child under 18), age, receipt of public assistance (including rental vouchers), military status, or genetic information."

The City, through the NFHC and the Newton Human Rights Commission (NHRC), plays a role in the enforcement of non-discrimination requirements through the NHRC's receipt, informal resolution, or referral of housing discrimination complaints involving Newton properties, and through the advisory and advocacy functions of the NFHC. In addition, a key element of the applicable fair housing principles is the City's duty to "affirmatively further fair housing," a statutory mandate imposed on recipients of HUD funds, which requires them to take action to prevent discrimination, foster integrated and inclusive communities, and assure equal access to community assets.

The "Housing Report" contains a Background section that describes the applicable legal authorities regulating housing development and zoning in Newton, such as Mass. Gen. Laws Ch. 40A and Ch. 40B. In addition to those legal authorities, various sources of fair housing law also govern the City's actions and decisions. These sources include the federal Fair Housing Act, 42 U.S.C. 3601 et seq.; the Massachusetts Anti-Discrimination Law, Mass. Gen. Laws Ch. 151B; and the Newton Revised Ordinances, Art. V, sec. 12-50 (a) and (b).

Taken together, these laws extend to any housing related activity, including but not limited to housing development, construction, and management; City housing planning, development and zoning activities; housing sales, leasing, and rentals; realtor and broker practices; advertising and listing practices; and home mortgage, lending, and insurance practices. The requirements apply to all types of housing with few limited exemptions, whether they are in the private or public real estate sectors, and regardless of whether government financial assistance is received.

Unlawful housing discrimination may involve policies or actions taken with a discriminatory intent or purpose, or it may be the result of neutral policies or actions which have a discriminatory effect based on prohibited grounds. The discriminatory effect may take the form of a greater adverse effect

("disparate impact") on a protected class, or it may involve reinforcement or continuation of segregated housing patterns ("perpetuation of segregation"). Examples of a greater adverse impact might be a situation where a City repeatedly approves sizable developments containing one-bedroom and studio apartments only (possible disparate impact on families with a child under 18), or where a City exclusively approves townhouse developments which have no units with first floor bedrooms (possible disparate impact on persons with a mobility impairment).

Finally, the duty to "affirmatively further fair housing" described earlier, which is required of HUD fund recipients such as municipalities, is also included among these laws. In the words of the HUD implementing regulation, it means, "taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics".

II. SPECIFIC REFLECTIONS ON THE "HOUSING REPORT"

- A) (Community opposition to housing development; see page 51). It is important to note that third party actors such as neighbors have the right to protest or grieve new housing construction or development as a matter of Constitutional law. However, if their reasons are discriminatory AND the City or its officials base an adverse decision on those reasons, then the City or its officials may be found liable for housing discrimination. City officials should have knowledge and understanding of fair housing principles (if necessary through education/training programs) so that they can respond as appropriate to community opposition at public meetings and other forums.
- B) (Neighborhood "character"; see page 68). One of the housing location principles identified by participants at a November public RKG housing workshop was maintaining the "character" of the neighborhoods. As a general rule, the wording of such a goal needs to be treated with caution. Unfortunately, many jurisdictions in the United States have over time used the rationale of protecting a neighborhood's "character" in order to keep out certain persons based on their protected status. That could give rise to fair housing violations in a fact situation where adverse actions or decisions are taken by a city because of such neighborhood or community objections. If the actual intent of a neighborhood "character" objection is only to address the physical character or scale of a proposed development, then the language used should be clearly rephrased accordingly.
- C) (Zoning requirements for group homes for persons with a disability; see page 54). When the Newton Zoning Ordinance is further revised and updated, as is planned, it will need to make clear that a group home for persons with a disability may as a matter of fair housing law be entitled to a waiver or modification of zoning requirements if that is necessary as a reasonable accommodation in order to provide an equal housing opportunity.
- D) (Regional Study Area/ Housing Market Area; see page 8). If the scope of a "Regional Study Area" differs from the scope of the applicable housing market area, then the latter should be identified clearly. In addition, in the event there is some future consideration of a possible

housing preference or priority for special populations such as seniors with rehousing needs, the City would then have to remain mindful of its affirmative duty obligation to increase housing opportunities for all those in its housing market area.

EXHIBIT A

Additional Data Items That Would Enhance an Understanding of the Fair Housing Dimensions of Current Newton Housing, as noted at cited pages of the Housing Report.

- 1) The number (and percentage of total population) of African-American residents for 2013 and the base year 2000, in Newton and the Regional Study area and statewide (page 7)
- 2) The number (and percentage of total population) of Asian-American residents for 2013 and the base year 2000, in Newton and the Regional Study area and statewide (page 7)
- 3) Information on the distribution of bedrooms (i.e. 0, 1, 2, or 3) in recently constructed or redeveloped Newton housing units, which are government funded or regulated, for both rental and ownership properties (pages 11-12)
- 4) To the extent available, information on the number of physically accessible housing units located in Newton, including:
 - A) Federal and state programs for persons with a disability or the elderly, whether or not they are subsidized;
 - B) Units owned and operated by the Newton Housing Authority (NHA);
 - C) Private market units for which the NHA administers Section 8 Housing Choice vouchers;
 - D) Units for which Mass. Rental Voucher Program vouchers are provided.(Pages 46-47)
- 5) To the extent available, information on the number of private market units in Newton for which a Newton Housing Authority (NHA) administered housing voucher is used. For non-NHA administered housing vouchers,, to the extent available, information on the number of private market units in Newton for which (A) a federal or (B) a state administered housing voucher is used.
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