

# Fair Housing Compliance Considerations for Land Use and Planning Decisions

Module Developed by the  
MetroWest Home Consortium and  
Regional Housing Services Office

Trainer:  
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JM Goldson community preservation + planning



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## Section 1: What is Fair Housing

### Section 2: Fair Housing and Local Land Use Policies and Practices

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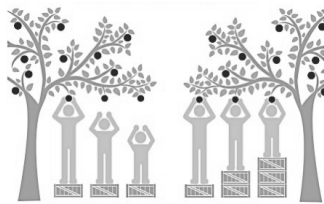
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## Short History Lesson of the Fair Housing Act

Federal policies and programs were explicitly designed to racially segregate metropolitan areas in the U.S.

### Fair Housing's Goal

To promote equity by undoing the social engineering of past policies that created highly segregated communities.



Equality ...doesn't mean... Equity  
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### Government Policy Explicitly Designed to Racially Segregate Metropolitan Areas



1930s Home Owner's Loan Corp Map of Newton showing Upper Falls and Nonantum areas as "Hazardous" for investment

Map Source: Mapping Inequality  
<https://dat.richmond.edu/eaporan/median/1900-1940/90-93/center/9>

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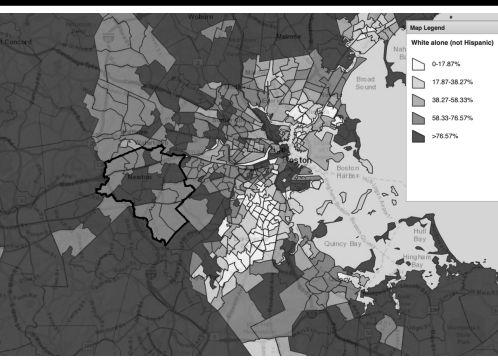
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### Lasting Effect of Past Policies



Map Legend  
 White alone (not Hispanic)  
 0-17.87%  
 17.87-38.27%  
 38.27-58.33%  
 58.33-76.57%  
 >76.57%

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### Why could more multi-family housing in towns like yours help to undo the effects of past policies?

**Renting can be less expensive than ownership**

**Boston Metro Area:**

- Median monthly owner costs w/ mortgage **\$2,328**
  - (Newton: \$3,538)
- Median monthly rent **\$1,212**
  - (Newton: \$1,649)

*Sample of current rental listing prices in Newton (Zillow)*



\$2,650  
2bd • 2ba • 1,050 sqft  
1600 Washington St  
Contact Property



\$3,000  
2bd • 3ba  
14 Town House Dr #C1  
Contact Property

Important side note:  
 When a community has a supply of rental housing options to meet the demand, rental prices can come down.

Source: 2013-2017 American Community Survey  
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### More single family means less rental options

#### Most Rental Options are in Multi-family Buildings

##### Boston Metro Area

- **6%** single-family houses are renter occupied (7% in Newton)
- **74%** multi-family (2+ units) are renter occupied (64% in Newton)

Source: 2013-2017 American Community Survey

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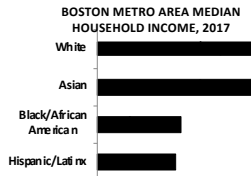
### Non-white households are more likely to rent

#### Renters by Race/Ethnicity

##### Boston Metro Area

- **74%** Latinx/Hispanic
- **67%** Black/African American
- **48%** Asian
- **34%** White

Source: 2013-2017 American Community Survey



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### Causes of residential segregation - it's complicated

Socioeconomic disparities are not the only reasons the region is highly segregated.

#### Other reasons?

- Discrimination persists (actual or fear of)
- Reputation of neighborhoods
- Need/desire to live near friends and family
- How people learn of housing choices/neighborhood selection process limits choices – not scientific process

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

Krysan and Crowder, *Cycle of Segregation: Social Processes and Residential Stratification*, 2017 (Russell Sage Foundation)

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## Meet the Legislation

- **14<sup>th</sup> Amendment US Constitution: Equal Protection Clause**
  - . . . Nor shall any State . . . Deny to any person within it's jurisdiction the equal protection of the laws.
  - 1868 – validated equality provisions in Civil Rights Act of 1866




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## Meet the Legislation

- **14<sup>th</sup> Amendment US Constitution: Equal Protection Clause**
- **Massachusetts Antidiscrimination Law – MGL c.151B (1946)**
  - Protects individuals based on membership of a protected class
  - Antidiscrimination for both employment and housing




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## Meet the Legislation

- **14<sup>th</sup> Amendment US Constitution: Equal Protection Clause**
- **Massachusetts Antidiscrimination Law – MGL c.151B (1946)**
- **The Fair Housing Act: Title VIII of the Civil Rights Act of 1968 (strengthened in 1988)**
  - Protects individuals based on membership of a protected class
  - Promotion of equal opportunity to access housing
  - Requires proactive elimination of segregation




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## Meet the Legislation

- **14<sup>th</sup> Amendment US Constitution: Equal Protection Clause**
- **Massachusetts Antidiscrimination Law – MGL c.151B (1946)**
- **The Fair Housing Act: Title VIII of the Civil Rights Act of 1968 (strengthened in 1988)**
- **Section 504 of the Rehabilitation Act of 1973**
  - Expands protected classes to include individuals with disabilities
  - Applies when federal funding is involved




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## Meet the Legislation

- **14<sup>th</sup> Amendment US Constitution: Equal Protection Clause**
- **Massachusetts Antidiscrimination Law – MGL c.151B (1946)**
- **The Fair Housing Act: Title VIII of the Civil Rights Act of 1968 (strengthened in 1988)**
- **Section 504 of the Rehabilitation Act of 1973**
- **American with Disabilities Act of 1990 (ADA)**
  - First comprehensive civil rights legislation protecting people with disabilities from discrimination




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## Protected Classes

### Federal

1. Race
2. Color
3. National Origin
4. Religion
5. Sex
6. Familial Status (*including families with children under the age of 18*)
7. Disability




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## Protected Classes

**State** includes all of the federal classes and:

1. Ancestry
2. Age
3. Marital Status
4. Source of Income (*including Section 8*)
5. Sexual Orientation
6. Gender Identity and Expression
7. Veteran/Military Status
8. Genetic Information



Note: Income level is not a protected class

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## Individuals with Disability



Individuals who have, who are regarded as having, or with a record of physical or mental impairments that substantially limit one or more major life activities.

Examples:

- |                  |   |
|------------------|---|
| 1. Mobility      | 8. Developmental disabilities   |
| 2. Visual        | 9. Mental illness   |
| 3. Speech        | 10. Drug addiction ( <i>other than current, illegal use of controlled substance</i> ) |
| 4. Hearing       | 11. Alcoholism  |
| 5. Heart disease |   |
| 6. Diabetes      |   |
| 7. HIV infection |   |

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## “Direct Threat”

The Fair Housing Act does not allow for the exclusion of individuals based upon fear, speculation, or stereotype.

The Act does not protect an individual with disabilities whose tenancy would pose a “direct threat” to the health or safety of other individuals or whose tenancy would result in substantial physical damage.

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# Reasonable Accommodation

Unless, this threat/risk can be reduced by “reasonable accommodation”

The fact that one individual may pose a threat does not mean that another individual with the same disability may be denied housing.

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## Section 1: What is Fair Housing

### Section 2: Fair Housing and Local Land Use Policies and Practices



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## Fair Housing & Zoning

Zoning often perpetuates segregation, particularly through limitations on multi-family housing

### Minneapolis, Tackling Housing Crisis and Inequity, Votes to End Single-Family Zoning



#### How zoning is a proxy for race

Single-family neighborhoods rose to prominence across the country after the United States Supreme Court ruled in 1917 that zoning based on race was unconstitutional.

“Single-family zoning became basically the only option to try to maintain both race and class segregation,” said Jessica Trounstein, an associate professor of political science at the University of California, Merced, who has studied segregation.

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### Four Key Concepts

- 1) Discriminatory Intent & Effect
- 2) Affirmatively Furthering Fair Housing
- 3) Community Sentiment & Coded Language
- 4) Reasonable Accommodation

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### Making unavailable

**Fair Housing Act prohibits “making unavailable” a dwelling to any person because of being a member of a protected class**

**including discriminatory use of zoning laws among other things.**

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## Discriminatory Intent

An action which intentionally treats a person or group of persons differently because of protected characteristics

What protected classes do you think could be treated differently by the examples below of descriptions in housing ads?

- "active adult community"
- "perfect for professional couple"

Another example:

- Facebook allowed ads to excludes viewers by race

"...Facebook lets advertisers exclude users by race in real estate advertising," Coons said, pointing to reporting by ProPublica. "There was a way that you could say this particular ad I only want to be seen by white folks, not by people of color, and that clearly violates fair housing laws and our basic sense of fairness in the United States."

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## Discriminatory Effect

A policy or practice that

- adversely affects people of a protected class more than other people (a.k.a. disparate impact)
- and/or perpetuates segregated housing patterns

Can appear neutral on its face

What protected classes could be adversely affected by these policies?

1. Local preference
2. Occupancy limits for unrelated individuals
3. Multi-family units limited to studio or one bedrooms only
4. Permit "rehabilitation residences" for people recovering from treatment for alcohol and drug use only in one of the commercially-zoned areas of the community

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### Potential Fair Housing Violations You May Not Know About

Wednesday, April 11, 2018  
By Tarryn Mento

kpbs evening edition



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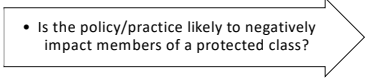
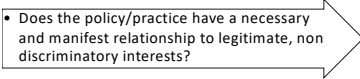
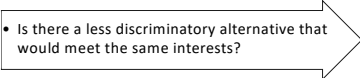
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# Discriminatory Effects Standard

## Three-Part Burden-Shifting Test

- 1 
  - Is the policy/practice likely to negatively impact members of a protected class?
- 2 
  - Does the policy/practice have a necessary and manifest relationship to legitimate, non discriminatory interests?
- 3 
  - Is there a less discriminatory alternative that would meet the same interests?

HUD, Affirmatively Furthering Fair Housing Final Rule (2015)

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## Case Study #1

- In 1970, population of the subject town was about 64,000, mostly white with only 27 black residents
- Community was zoned mostly for single-family but allowed multi-family in buffer zones near commercial/industrial areas
- A religious institution wanted to build affordable housing on some of its land
- The institution, working with a local developer, proposed to build 190 units on 15-acres in 20 two-story building and sought a zoning change to allow multi-family on the property
- Some residents raised concerns about decreased property values and objections to the proposed new residents – other residents spoke in favor of the development noting the need for racial integration and affordable units
- Village Plan Commission voted against proposal finding the site was not appropriate and referred to the single family zoning assumptions of those who purchased properties surrounding the site

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## Case Study #1 – What do you think?

1. What federal protected classes may be affected in this situation?

2. Would this case involved discriminatory intent or effect?

### Federal Protected Classes

1. Race
2. Color
3. National Origin
4. Religion
5. Sex
6. Familial Status  
*(including families with children under the age of 18)*
7. Disability

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**Village of Arlington Heights  
v. Metro Housing Development Corporation (1977)**

- Village denies request by Metro Housing Development Corporation (MHDC) to rezone a parcel from single to multi-family for a low/moderate-income development.
- MHDC files suit alleging that the denial of the rezoning was racially discriminatory
- And claimed that it violated the Equal Protection Clause of the 14<sup>th</sup> Amendment and the Fair Housing Act
- The US Supreme Court weighed in on the case and found no evidence of discriminatory intent under Equal Protection Clause.
- It remanded the case back to the Seventh Circuit Court of Appeals.

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**Village of Arlington Heights  
v. Metro Housing Development Corporation (1977)**

- In 1977, the Seventh Circuit reconsidered case under the Fair Housing Act
- The court found that the rezoning denial had be examined in context and that the town was ignoring the problem of high residential segregation in the county.
- The Court further found that the town had allowed itself to become a nearly all white community and was perpetuating the problem because it had no plans to develop affordable units and had no properties in the multifamily zoned areas which could economically be developed.
- The case establishes precedent that a discriminatory effect alone can establish a Fair Housing violation.

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**Four Key Concepts**

- 1) Discriminatory Intent & Effect
- 2) Affirmatively Furthering Fair Housing
- 3) Community Sentiment & Coded Language
- 4) Reasonable Accommodation

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## Affirmatively Furthering Fair Housing

Taking meaningful actions to overcome patterns of segregation and foster inclusive communities free from discrimination.

The duty to affirmatively further fair housing extends to state, local, and public housing agencies that receive HUD funding.



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## Affirmatively Furthering Fair Housing

What can communities do to affirmatively further fair housing?

### Newton Fair Housing Committee Architectural Accessibility Action Plan

January, 2012

The Newton Fair Housing Committee has identified seven priorities that if implemented will become significant steps in eliminating impediments to fair housing choice in Newton for people with disabilities. The matrix below organizes these priorities by identifying action steps for implementation including the role(s) of the Newton Fair Housing Committee, and by identifying and prioritizing other parties whose involvement is essential in ensuring successful implementation.

Actions	Newton Fair Housing Committee Role(s)	Primary Parties	Secondary / Outside Parties
<b>1. ADA and SECTION 504 ADMINISTRATION*</b>			
Update ADA Plan, add Section 504, include measurable goals, periodic updates and reporting process.	Advocate for updated ADA Plan and integration of Section 504 requirements. Advise on incorporation and	ADA/Section 504 Accessibility Coordinator Fair Housing	All City Departments Community Advocates Disability

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## Case Study #2

- In a primarily white, middle class suburban community with no public transportation, the Housing Authority is planning to update its wait list for public housing and Section 8 vouchers.
- It develops an application process that requires pick up of applications during a 2-day window and to return them by Friday the following week. No online applications are made available.
- Submitted applications will be placed in a lottery with local preference.
- A group of extremely low-income minority households from neighboring communities are interested in applying for the wait list. However, they do not have cars and have a difficult time meeting the application pick up and drop off requirements.
- Once submitted, their applications go to the bottom of the wait list because they lack a current connection to the community.
- These applicants join together to file suit against the Housing Authority, charging that the application process is discriminatory.

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### Case Study #2 – What do you think?

1. What **protected classes** may be affected in this situation?
2. Would this case involve discriminatory **intent** or **effect**?
3. Would the local preference policy raise any fair housing issues?
4. Would the application procedures raise any fair housing issues?
5. Would the case raise any issues regarding a duty to affirmatively further fair housing?

**Federal Protected Classes**

1. Race
2. Color
3. National Origin
4. Religion
5. Sex
6. Familial Status  
*(including families with children under the age of 18)*
7. Disability

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### Langlois

#### v. Abington Housing Authority (2002)

- A group of extremely low-income women of color and the Coalition for the Homeless brought suit against eight Housing Authorities (Avon, Abington, Bridgewater, Halifax, Holbrook, Middleborough, Pembroke and Rockland) after experiencing barriers in their attempt to participate in the lottery system.
- The communities where the Housing Authorities were located were characterized as predominantly white, with a low overall rate of poverty.

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### Langlois

#### v. Abington Housing Authority (2002)

- The plaintiffs asserted that the Housing Authorities' implementation of residency preferences in the lottery system was discriminatory.
- U.S. District Court for MA found that residency preferences of 6 Housing Authorities had a discriminatory effect on racial minorities.
- The court did not find that the application procedures had a discriminatory effect.
- But did find that it was a violation of the Housing Authorities' duty to affirmatively further fair housing.

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We are more than halfway.  
Would anyone like a 10-minute break?

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**Four Key Concepts**

- 1) Discriminatory Intent & Effect
- 2) Affirmatively Furthering Fair Housing
- 3) Community Sentiment & Coded Language
- 4) Reasonable Accommodation

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**3. Community Sentiment & Coded Language**

**Coded Language** - Sometimes it is not just what is said but what lies behind the statement that can cause an issue.

A public policy must be based on identified, legitimate non-discriminatory reasons to avoid fair housing liabilities.

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### 3. Community Sentiment & Coded Language




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### 3. Community Sentiment & Coded Language

**Example:**

A community members objects to a proposal for permanent supportive housing for individuals with disabilities:

*I have many concerns about chronically homeless individuals living within such a short distance of my home. . . How can I be assured that my daughter, who comes home late at night from work in our dark driveway, is safe from these individuals?*

**Fear  
Speculation  
Stereotype**

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### 3. Community Sentiment & Coded Language

What are some other examples of coded language?

Here are some things we've seen/heard:

- Rental housing is associated with transients
- The children in this development may bring our school's test scores down
- Housing authority that discourages "urbanites . . . Who have not ventured far from their urban surroundings" from applying

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### 3. Community Sentiment & Coded Language

- Community members have First Amendment right to free speech
- BUT, a municipal board cannot base its decisions on discriminatory reasons
- Meeting minutes can be used as evidence of intent



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### How can a board respond to biased community sentiment?

Something like . . .

**“We recognize your right to express your point of view, but these are not considerations that the board can take into account because they may violate fair housing laws.”**

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### Case Study #3

- Developer Y requests a zoning amendment to reduce required lot size.
- The developers plan to build “moderately-priced” housing on the border of predominantly white community. Developer Y’s is known for developing Hispanic neighborhoods.
- Neighbors expressed concerns that developer “catered” to low-income families and that people in their developments tend to have large households, lack pride of ownership, and fail to maintain their properties, resulting in increased crime.
- Quote from a neighbor: “We find it very disappointing that we have worked very hard to keep our children out of areas like this, as well as worked very hard to buy the home that we live in.”
- The lot size reduction was a fairly standard request in this community which regularly granted these changes. Zoning Board voted to recommend the rezoning to the local legislative body, despite community sentiment.
- However, the local legislative body denied the zoning amendment.
- This was the first zoning amendment rejection in three years and in more than 76 requests.

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### Case Study #3 – What do you think?

1. What protected classes may be affected in this situation?
2. What key concepts may be relevant to this situation? (e.g., discriminatory effect/intent, Affirmatively Furthering Fair Housing, Reasonable Accommodation)
3. How well do you think this town handled the situation?

**Federal Protected Classes**

1. Race
2. Color
3. National Origin
4. Religion
5. Sex
6. Familial Status  
*(including families with children under the age of 18)*
7. Disability

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### Avenue 6E Investments, LLC

#### v. City of Yuma: 2016

- Developers filed suit for discriminatory intent under Equal Protection Clause of the 14<sup>th</sup> Amendment, as well as for discriminatory effect under the FHA.
- Outcome: The Ninth Circuit Court of Appeals ruled in favor of the developer finding discriminatory intent.
  - The Court concluded that there was sufficient evidence that the City had rejected the developer’s application for reasons of barely disguised hostility toward the expected residents of the new development.
  - There appeared to be no principled opposition to the requested zoning amendment.
  - The record was replete with “racially-tinged code words” and for the Hispanic influx that the neighbors anticipated.

“None of the alleged statements expressly refers to race or national origin; rather, they raise various concerns about issues including large families, unattended children, parking, and crime. We have held, however, that the use of “code words” may demonstrate discriminatory intent.” Ninth Circuit

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### Four Key Concepts

- 1) Discriminatory Intent & Effect
- 2) Affirmatively Furthering Fair Housing
- 3) Community Sentiment & Coded Language
- 4) Reasonable Accommodation




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### 4. Reasonable Accommodation

An exception or change to rules, policies, <sup>A</sup> regulations to allow accommodations for a person with disabilities an equal opportunity to use and enjoy a building.

Such as:

- Allowing ramps in the front yard setback
- Allowing parking in side yard setback
- Exceed the maximum occupancy standards imposed through zoning for unrelated individuals (particularly to allow group homes)



In addition to federal Fair Housing Act, Title II of the ADA, and Section 504, the Mass. Antidiscrimination Law c.151B (s. 7A) requires reasonable accommodation, as does MGL c.40A.




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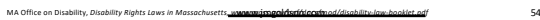
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### Reasonable Accommodations and M.G.L. c.40A

**A**

- Per the MA Zoning Act cannot discriminate a disabled person:
- a) Occupancy standards for group homes that are more restrictive than that imposed on families (state sanitary code)
  - b) Ramps for handicap access




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## Reasonable Accommodations Process

Many communities fall down on **PROCESS** for reasonable accommodation:

- 1) Process needs to be flexible
- 2) Process needs to be confidential
  - Cannot give notice to neighbors or others
  - Cannot review or consider the requests in public hearings or forums
  - Must keep all disability information confidential

Also, the municipality may not charge a fee to process such requests

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## Reasonable Accommodations Process

Home - Government - Town Departments - Community Development & Planning - Inspectional Services Division - Reasonable Accommodation

### Reasonable Accommodation

**What is Reasonable Accommodation**

The Department of Justice and the Department of Housing and Urban Development expressly prohibit, under the Federal Fair Housing Act, the discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability. One type of disability discrimination prohibited by the Act is the refusal to make Reasonable Accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.

In order ensure the Town of Watertown's compliance with the Federal Fair Housing Act and the Americans with Disabilities Act, the town has implemented a new permit application process to streamline the review and permitting of a reasonable accommodation.

**Here's how it works in Watertown:**

[Administrative Review Process \(PDF\)](#)

[Application Form for Reasonable Accommodation \(PDF\)](#)

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## Case Study #4

- Recovery House operates a group home for 10-12 individuals recovering from alcoholism and drug addiction in a neighborhood zoned for single-family residence.
- Town of Z issued citations to Recovery House charging violation of the town's zoning bylaw.
- The zoning bylaw requires that the occupants of single-family dwelling units must compose a "family."
- Bylaw defines family as "persons [without regard to number] related by genetics, adoption, or marriage, or a group of five or fewer [unrelated] persons."

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### Case Study #4

1. What protected classes may be affected in this situation?
2. What key concepts may be relevant to this situation?

**Federal Protected Classes**

1. Race
2. Color
3. National Origin
4. Religion
5. Sex
6. Familial Status  
*(including families with children under the age of 18)*
7. Disability

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### City of Edmonds

#### v. Oxford House, Inc. (1995)

- Discrimination covered by the FHA includes “a refusal to make reasonable accommodations . . . to afford [handicapped] person[s] equal opportunity to use and enjoy a dwelling.”
- Oxford House asked the City to make a reasonable accommodation by allowing it to remain in the single-family dwelling.
- Oxford House explained that the group home needed 8-12 residents to be financially and therapeutically viable.
- The City sued Oxford House seeking a declaration that the FHA does not constrain the City’s zoning code family definition rule.
- The FHA provide an exemption that permits a reasonable restriction on the maximum occupants in a dwelling.

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### City of Edmonds

#### v. Oxford House, Inc. (1995)

- U.S. Supreme Court held that the zoning definition of “family” is not exempt from the Fair Housing Act.
- Justice Ginsburg reasoned that the provision was a family composition rule and not a maximum occupancy restriction because it capped the number of unrelated persons allowed to occupy a single-family dwelling but did not cap the total number of people if they were related.
- The city discriminated by failing to provide reasonable accommodation to individuals with disabilities under the Fair Housing Act
- Court ruled in favor of Oxford House stating that the purpose of a maximum occupancy restriction should be to protect health and safety by preventing overcrowding and that it would need to be held uniformly.

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### Case Study #5

- A live-in elder care facility home to 35 elders, mostly individuals with disabilities is operating in three single-family houses on adjoining properties. The facility's owners are in the process of obtaining needed permits and have active applications.
- Neighbors want to cease operations and obtained state court judgement ordering the owners to close the home. There is a restrictive covenant on properties in the neighborhood that allows only single-family houses and no nuisances.
- Zoning allows single, two family, and multifamily. Homes for the aged are permitted with a use variance.
- Neighbors express fears that their children may disturb the elderly residents and may affect their property values. Also complain about inadequate parking and excessive noise from ambulances and hearses.
- One neighbor stated that the presence of the elderly would cause them to think about death.

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### Case Study #4

1. What protected classes may be affected in this situation?
2. What key concepts may be relevant to this situation?

#### Federal Protected Classes

1. Race
2. Color
3. National Origin
4. Religion
5. Sex
6. Familial Status  
*(including families with children under the age of 18)*
7. Disability

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### Casa Marie, Inc. v. Superior Court of Puerto Rico (1990)

- The court found that private citizens used the state judicial system to enforce a facially-neutral zoning statute and restrictive covenant – the act of enforcing the covenant constituted a state action in violation of the Fourteenth Amendment right to equal protection under the law.
- The neighbor's concerns were arbitrary and irrational. For example, studies have shown that the presence of children lessens depression of elderly people and other issues raised were no more than pretexts used to rationalize discrimination.
- The court witnessed the location of Casa Marie and found it sufficiently isolated from the rest of the neighborhood with sufficient surrounding space.

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### Casa Marie, Inc. v. Superior Court of Puerto Rico (1990)

- The court also found violations of the FHA for both discriminatory intent and effect.
- Testimony of the neighbors demonstrated discriminatory intent and the effect of enforcement of the restrictive covenant and the zoning would be a broad-scale exclusion of elderly with disabilities.

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### Now what?

Read the HUD/DOJ Joint Statement (2016)

Washington, D.C.  
November 18, 2016

JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT AND THE DEPARTMENT OF JUSTICE  
STATE AND LOCAL LAND USE LAWS AND PRACTICES AND THE APPLICATION  
OF THE FAIR HOUSING ACT

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### Thank you!

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