

Memorandum

To: Newton City Council

From: Ted Hess-Mahan

CC: Mayor Ruthanne Fuller
Barney Heath, Director of Planning and Development
Members of the Newton Fair Housing Committee

Date: March 31, 2021

Re: #96-21 Fair Housing Resolution

As a member of the Newton Fair Housing Committee and its chair for 2020-2021, I wanted to thank you for considering the Fair Housing Resolution honoring the work of the Newton Fair Housing Committee, and allowing me to comment in support of the Resolution at the March 22, 2021 Zoning and Planning Committee Meeting. April is Fair Housing Month, to commemorate the enactment of the Fair Housing Act (the Act) on April 11, 1968, just one week after the assassination of civil rights leader Dr. Martin Luther King, Jr. The purpose and goals of the Act are to end housing discrimination and promote diverse, inclusive communities, and to Affirmatively Furthering Fair Housing (AFFH).

I write to supplement my comments in ZAP with some additional materials and information for your consideration when the Resolution is voted on at the next Newton City Council Meeting on April 5, 2021.

AFFH was part of the Act when it was passed by Congress in 1968. Congress directed the Department of Housing and Urban Development (HUD) to make sure that neither the agency itself, nor the cities, counties, states, municipal housing agencies it funds discriminate in their programs. Further, Congress intended that HUD programs be used to expand housing choices and help make all neighborhoods places of opportunity, providing residents with access to the community assets and resources they need to flourish. As a recipient of \$3.5 million from HUD through Community Development Block Grant (CDBG), HOME Investment Partnerships Program (HOME), and Emergency Solutions Grant (ESG) funds, Newton is obligated to implement the AFFH provision of the Act.

The Resolution honors the important work that the Fair Housing Committee is doing to ensure that the City of Newton fulfills its obligations to provide fair access to housing and equal opportunity for all. Newton is the lead member of the WestMetro HOME Consortium, and is responsible for administering and distributing federal housing funds to the twelve participating communities, and preparing a five-year plan to implement the AFFH provisions of the Act. The Consortium's Analysis of Impediments to Fair Housing Choice, 2021-2025 (the AI Report), lists several key strategies and actions, including a review of restrictive zoning policies that limit the amount of multi-family and affordable housing in Newton. In addition, Newton is obligated to comply with the recently passed Housing Choice legislation, which requires the creation of at least one by-right multi-family zone close to transit. These actions are essential parts of the City's plan to fulfill its obligations under the AFFH provisions of the Fair Housing Act.

For your convenience, I attach excerpts from the AI Report containing the recommendations for strategies and actions that Newton has undertaken to implement the AFFH provision of the Act, as well as a Memorandum from the Law Department dated February 5, 2021, summarizing the key provisions and effect of the recently passed Housing Choice legislation.

I strongly urge all Members of the Newton City Council to vote for the Fair Housing Resolution in its entirety, and support the important work of the City of Newton and the Fair Housing Committee to ensure that the City fulfills all of its obligations under the Fair Housing Act.

Thank you.

Recommendations: 2020-2025⁹

STRATEGY AND ACTIONS	TIMEFRAME	DIFFICULTY	RESPONSIBLE PARTIES
<p>Each community in the Consortium will make a public commitment and develop and distribute information and educational resource/outreach materials to increase knowledge about fair housing. All materials shall be universally available (accessible to people with Limited English Proficiency and people with disabilities).</p>			
<ul style="list-style-type: none"> The WestMetro HOME Consortium will sponsor an annual fair housing training by the Citizen Planner Training Collaborative (CPTC) for municipal boards, commissions, and staff from all 13 Consortium communities, together with their non-profit partners, to educate them about the Federal Fair Housing Act and its application to land use policy and locally funded or initiated housing projects. Make resources available in an electronic format (e.g., webinars and website content) whenever possible.¹⁰ See Appendix C for inventory of municipal boards, commissions, and staff and non-profit partners. 	Annual	Low May require funding	WMHC Staff
<ul style="list-style-type: none"> Hold an annual fair housing conference or “panel of experts” event in April to keep the subject of fair housing visible to the community. 	Every 2 years (Fair Housing Month)	Medium	WMHC Staff

⁹ This plan does not include an accompanying funding plan and it is assumed that the costs of implementing this plan will be from the HOME Consortium’s administrative funds and other program areas.

¹⁰ CPTC has developed a Fair Housing course as part of its new, updated statewide curriculum. The Consortium can request the course for its membership through the “course on demand” option offered by CPTC.

STRATEGY AND ACTIONS	TIMEFRAME	DIFFICULTY	RESPONSIBLE PARTIES
<ul style="list-style-type: none"> Develop a series of fair housing public service announcements for distribution to local cable access channels. 	2 x year (spring, fall)	Medium – High (depending on community)	
<ul style="list-style-type: none"> Provide information on fair housing responsibilities to first-time landlords, small property owners, realtors, and public and private housing developers. Additionally, disseminate materials in collaboration with local and regional media including community access television, local print and digital media platforms, and local officials’ outreach channels. Make resources visible and readily available in municipal offices and other public spaces. 	Annually (April, Fair Housing Month)	Medium Requires funding	WMHC Staff
Identify and address discriminatory actions in the private real estate market			
<ul style="list-style-type: none"> Budget resources for fair housing testing and engage the Fair Housing Center of Massachusetts or another qualified organization to conduct testing in each Consortium community and other interested communities in the MetroWest/Route 2 region. Plan an on-going testing program throughout the 5-year plan period to allow for statistically significant data. 	5-Year Testing Program (to coincide with the 5-year plan schedule)	High Requires funding	Third-Party Testing Agency WMHC Staff
<ul style="list-style-type: none"> Hold an executive presentation to the Select Board or City Councils of the 13 WestMetro HOME Consortium communities. Additionally, hold a public education forum to present testing results to the public, recognizing that many people do not understand fair housing laws, or they believe discrimination does not happen in their town. (The latter could be done as part of the “annual fair housing conference” referenced above.) 	At the conclusion of the 5-year testing program	Medium	Third-Party Testing Agency WMHC Staff
<ul style="list-style-type: none"> Work with local/regional realtor® and property associations to offer training that specifically addresses top issues reported in fair housing complaints reported and filed with FHCG, MCAD, and 	Every 2 Years (April, Fair Housing Month)	High May require \$\$	Third Party Consultant WMHC Staff

STRATEGY AND ACTIONS	TIMEFRAME	DIFFICULTY	RESPONSIBLE PARTIES
FHEO, as well as those identified through the five-year testing program.			
Increase the Consortium’s capacity to affirmatively further fair housing.			
<ul style="list-style-type: none"> The Consortium staff will include the implementation of this plan on its quarterly meeting agendas. 	Quarterly	Low	WMHC Staff
<ul style="list-style-type: none"> The Consortium will hold an annual meeting about fair housing planning and policy and the status of implementing this Plan. 	Annual	Low	WMHC Staff
<ul style="list-style-type: none"> As a condition of subgrantee agreements with the Consortium, each community will establish written processes detailing which local boards or committees are responsible for the intake process for fair housing complaints, and the subsequent referral to MCAD. These processes shall be published on the individual municipality websites. 	Annual	Low	WMHC Staff
<ul style="list-style-type: none"> Identify and publicize a list of Fair Housing Officers and/or Fair Housing Committees in each participating community and the organizational contacts who can be notified about issues or questions related to fair housing. 	Annual	Low	WMHC Staff
<ul style="list-style-type: none"> The Consortium will re-evaluate its criteria for review of housing proposals seeking funds as part of its annual competitive process to ensure that fair housing needs are met. 	Annual	Low	WMHC Staff
Each community will adopt policies and practices to support safe, diverse, affordable, accessible, and integrated housing			
<ul style="list-style-type: none"> Review zoning ordinances, bylaws, and practices to identify provisions that may encourage, unintentionally, discriminatory practices in permitting residential uses, e.g., requiring fiscal impact studies or excessive parking for multi-bedroom units, or age-restricted housing definitions that prohibit occupancy by people 	Ongoing (throughout 5-year period)	High May require \$\$	WMHC Staff, other municipal staff, local boards, and commissions

STRATEGY AND ACTIONS	TIMEFRAME	DIFFICULTY	RESPONSIBLE PARTIES
<p>under 18. The communities will identify ways to reduce the barriers they have imposed on multifamily residential development.</p>			<p>Third Party Consultant</p>
<ul style="list-style-type: none"> Each community that utilizes Local Preference will assess its impacts on affirmatively furthering fair housing in that community. Elements to be assessed include, but not limited to, lowering the Local Preference percentage and defining “local” to include any resident of the 13-community Consortium. The Consortium may consider working with a consultant to define a framework for this assessment. 			
<ul style="list-style-type: none"> Unless a community has already done so, each community will study, on its own or through a subregional compact, options to reduce or eliminate single-family zoning by allowing two-family dwellings (at minimum) in all residential districts. 	<p>Throughout the 5-year plan period</p>	<p>High May require \$\$</p>	<p>WMHC Staff, other municipal staff, local boards, and commissions Third Party Consultant</p>
<ul style="list-style-type: none"> The Consortium and its individual members will assess the language access needs of people with Limited English Proficiency and disabilities, as well as its compliance with federal language requirements as it relates to housing activities across the Consortium, and develop and implement strategies to address those needs to ensure equal access to fair housing and other civil rights information. The Consortium will explore strategies for pooling resources to improve language access and accessibility for its housing programs. 	<p>Years 1 and 2</p>	<p>High May require \$\$</p>	<p>Third Party Consultant WMHC Staff</p>

CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: February 5, 2021

TO: All Members, City Council

FROM: Jonah Temple, Assistant City Solicitor

RE: Housing Choice Zoning Amendments

On January 14, 2021, Governor Charlie Baker signed into law *An Act Enabling Partnerships for Growth* (the “Act”), a comprehensive economic bill that provides Covid-19 economic relief to various sectors. The Act included the long-awaited Housing Choice legislation that was previously proposed by Governor Baker in an effort to increase housing development. This memorandum summarizes the key changes to Massachusetts zoning law, G.L. c. 40A, that are most relevant to the City Council.

1. Simple Majority Vote for Certain Zoning Amendments and Special Permits

Prior to the Act, all changes to local zoning ordinances and all special permits required a $\frac{2}{3}$ vote to be approved. The Act changes that required vote from $\frac{2}{3}$ to a simple majority for certain types of zoning amendments and special permits.

The following types of zoning amendments are now subject to simple majority vote:

- Amendments that allow as of right or by special permit accessory dwelling units.
- Amendments that allow as of right or by special permit multi-family or mixed-use developments at an “eligible location,” which is defined as an area that by virtue of its infrastructure, transportation access, existing underutilized facilities, or location is a highly suitable location for residential or mixed-use smart growth zoning districts or starter home districts, including areas near transit stations such as rapid transit, commuter rail, bus or ferry terminals, or areas of concentrated development such as town and city centers and other existing commercial districts in cities and towns and existing rural village districts.
- Amendments that allow as of right open space residential developments.
- Amendments that allow by special permit an increase in the permissible density or intensity of use in a multi-family or mixed-use development.
- Amendments that allow by special permit a reduction in the amount of parking required for residential or mixed-use developments.

- Amendments that provide for TDR (Transfer of Development Rights) zoning or natural resource protection zoning in instances where the adoption of such zoning promotes concentration of development where a municipality deems it most appropriate, but will not result in a reduction in the maximum number of housing units that could be developed within the municipality.
- Amendments that modify local regulations concerning the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking, and building coverage requirements to allow for additional housing units beyond what would otherwise be permitted the existing zoning ordinance.
- Adoption of a smart growth zoning district or starter home zoning district in accordance with state law Chapter 40R.

The Act also provides a mechanism, known as a protest petition, to return the voting threshold for the above types of amendments back to $\frac{2}{3}$ in very limited circumstances where the owners of fifty percent or more of the area of the land proposed to be included in the zone change or of the area of the land immediately adjacent extending 300 feet therefrom file a protest to the zoning change.

The following types of special permits are now subject to a simple majority vote:

- Multi-family housing located within $\frac{1}{2}$ mile of a commuter rail station, subway station, ferry terminal, or bus station with not less than 10% of the housing affordable to households with annual income less than 80% of Area Median Income and whose affordability is assured by a minimum 30-year affordable housing restriction.
- Mixed-use development in centers of commercial activity within a municipality, subject to the same affordability requirements referenced above for multi-family housing.
- A reduced parking space to residential unit ratio requirement if the reduction results in the production of additional housing units.

These new voting requirements are *currently in effect* and will apply to all future City Council action on special permits and zoning amendments.

2. Multi-Family Zoning by Right in MBTA Communities

The Act imposes new by right multi-family zoning requirements for all “MBTA Communities,” which includes nearly all communities within the Greater Boston area and eastern Massachusetts, including Newton. All “MBTA Communities” must now have at least one zoning district of reasonable size in which multi-family housing is allowed by right, with no age restrictions and that is suitable for families with children. The Act also requires each such zoning district to have a minimum gross density of 15 units per acre and be no more than $\frac{1}{2}$ mile from a transit station.

If an MBTA Community fails to comply with this new zoning requirement, the Act imposes significant state funding penalties. Communities not in compliance will forfeit their eligibility to receive funding from sources such as the Governor's Housing Choice Initiative, the Local Capital Projects Fund, and the MassWorks infrastructure program.

Newton does not currently have a zoning district that satisfies the above requirements. Therefore the City will need to adopt such a district through formal amendment of the zoning ordinance. Given that the minimum criteria for this required district appear to also satisfy the requirements for being an "eligible location" for multi-family housing or mixed-use development, it is likely that adoption of such a zoning district will only require a majority vote.

The state Department of Housing and Community Development (DHCD) recently issued preliminary guidance regarding compliance with this by right multi-family zoning requirement. The guidance states that MBTA Communities will be deemed in compliance with the requirement until more specific guidance is developed and made available to affected communities. This means the City will have some period of time to implement the planning process necessary to adopt the mandatory zoning before it becomes ineligible for state grant programs.

3. Special Permit Standard for Reduced Parking for Residential Developments

The Act also allows municipalities to adopt a different special permit standard for reduction in parking if they choose. A zoning ordinance may provide that special permits can be granted for reduced parking spaces for a residential development after a finding by the special permit granting authority that the public good would be served and that the area in which the development is located would not suffer a substantial adverse effect from such diminution in parking.

4. Looking Ahead

The changes to a simple majority vote for certain zoning amendments and special permits are effective immediately and now apply to all future City Council action that triggers a majority vote. Moving forward, the Law Department will notify the City Council, through its Land Use and Zoning and Planning Committees, whenever a docket item triggers a simple majority voting requirement. In contrast, the new requirement that Newton adopt a by right multi-family zoning district is not immediate. The City will have time to create the required compliant zoning district and will not forgo any grant opportunities until additional guidance is provided and likely for some period of time thereafter.

DHCD intends to issue more detailed guidelines to MBTA Communities on compliance criteria and timelines for the Act's provisions requiring a by right multi-family zoning district. It is also expected that the Executive Office of Housing and Economic Development will issue guidance to assist municipalities in determining voting thresholds for various zoning amendments.

The Law Department is closely monitoring these significant changes and will keep you up to date when further guidance is released. Additional information and advice will also likely be forthcoming from the City's Planning and Development Department on the planning process for adoption of a by right multi-family zoning district.