Fair Housing for Local Governments
March 15, 2023

Agenda
• Fair Housing Act Review
• Disability and the Fair Housing Act
• Design and Construction Requirements
• Zoning and Land Use
• Nuisance and Crime-Free Housing Ordinances
• Other Fair Housing Considerations for Local Governments
• Affirmatively Furthering Fair Housing
• Increasing Fair Housing Choice for Residents

Federal Fair Housing Act

The Fair Housing Act (FHA) makes it illegal to discriminate against individuals in housing transactions based on:

- Race
- Color
- Religion
- National Origin
- Sex (including sexual orientation and gender identity as of Feb. 2021)
- Disability
- Familial Status (the presence of children under 18, pregnant individual, or anyone securing legal custody of a child)

Covered Transactions
- Rental
- Sales
- Lending
- Homeowners insurance
- Appraisals
- Zoning and land use
- Other municipal policies

Covered Dwellings
- Apartments and condos
- Public housing
- Private housing
- Dormitories
- Mobile home parks
- Homeless shelters
- Nursing homes
- Group Homes

Who Must Abide by Fair Housing Laws?
- Landlords
- Property Managers
- Non Profit Housing Subsidized Housing
- Portfolio Managers
- Maintenance Crews and Contractors
- Housing Industry Trade Associations
- Property Owners and Sellers
- Sales Agents and Brokerage Offices
- Listing Services
- Builders and Developers
- Architects
- Condo and Homeowner Associations
- Mortgage Lenders, Appraisers, and Servicers
- Homeowners Insurance Companies
- Long Term Care Facilities
- Governmental Jurisdictions
- Employees of Housing Providers
- Other Residents or Neighbors Acting as Agents of Housing Providers
- Basically Everyone!
Discriminatory Treatment

Individuals who are similarly situated or qualified are treated differently based on their membership in a protected class.

For example:
- Discrimination in access to housing, housing-related financial transactions, or housing-related municipal services
- Different terms and conditions or rules/procedures
- Failure to make reasonable accommodations/modifications
- Discriminatory advertisements or statements
- Harassment, intimidation, coercion, retaliation

Discriminatory Effects Liability

Facially neutral policies or practices can be discriminatory even if the provider had NO INTENT to discriminate!

Housing providers or local governments may be liable under the Fair Housing Act if a policy or practice has a disparate impact on a particular protected class more than on the general population.

Penalties for Violating the FHA

Administrative complaint or federal lawsuit
- Economic and non-economic damages
- Relief in the public interest
- Punitive damages
- Civil penalties
- Government monitoring
- Attorneys’ fees
- Injunctions
- Loss of tax credits

Other Laws and Rules

- Civil Rights Act of 1866 – all persons born in the United States, without regard to race, can make and enforce contracts, sue and be sued, and inherit, purchase, lease, sell, hold, and convey real and personal property
- PA Human Relations Act – illegal to discriminate based on age (40 and over) or users, handlers, or trainers of assistance animals for persons with disabilities
- Local ordinances may prohibit discrimination based on sexual orientation and gender identity, source of income, and/or other additional protected classes – at least 45 municipalities in PA have ordinances which include additional protected classes

Other Laws and Rules

- Title VI of the Civil Rights Act of 1964 – prohibits discrimination based on race, color, and national origin in any program receiving federal funding
- Section 504 of the Rehabilitation Act of 1973 – prohibits discrimination based on disability in any program or activity receiving in any program receiving federal funding
- Americans with Disabilities Act of 1990 – prohibits discrimination based on disability in programs and activities provided by state and local governments

Disability and the Fair Housing Act
**DISABILITY DEFINED**

A physical or mental impairment that substantially limits one or more of a person’s major life activities.

Includes people having a history of an impairment and people being perceived as having an impairment.

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**Reasonable Accommodation and Modification Requests**

A **reasonable accommodation** is a change in rules, policies, practices, or services that enables a person with a disability equal opportunity to use and enjoy a dwelling. Example accommodations include:

- Assistance animal with no fees, lease application in large print, permitting live-in personal care attendant, transfer to a more accessible unit/community, reserved marked handicapped parking space

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**What is Reasonable?**

A request for an accommodation or modification is considered reasonable if that request:

- Does not cause an undue financial and administrative burden to the housing provider
- Does not cause a basic change in the nature of the housing program available
- Will not cause harm or damage to others
- Is technologically possible

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**Verifying Disability and Need**

**If disability is obvious and need for accommodation or modification is clear** – No additional documentation may be required

**If disability is known, but need for accommodation or modification is not clear** – Only information to evaluate disability-related need may be required

**If disability and need are not known** – Provider may request documentation that tenant has a disability and a disability-related need

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**Verifying Disability and Need**

The professional providing a verification **does not** need to be a physician but **does** need to be qualified to assess the disability and familiar with the person requesting the accommodation. The letter should be written on professional letterhead and should:

1. Verify that the individual has a disability as defined by the Fair Housing Act. The diagnosis or the severity of the disability does not need to be disclosed.
2. Demonstrate a relationship between the disability and the need for the accommodation (how the request is necessary in order for the resident to be able to use and enjoy the premises on an equal basis).
DOJ and HUD have provided joint statements on Reasonable Accommodations Under the Fair Housing Act and Reasonable Modifications Under the Fair Housing Act:

- Clear Q&A format providing technical guidance on rights and obligations of persons with disabilities and housing providers under the Fair Housing Act
- Available at:


Design and Construction Requirements

Accessibility Requirements for New Construction

Applies to covered multifamily housing built after March 13, 1991, including housing for rental and for sale.

The following multifamily dwellings must comply:

- All buildings containing four or more dwelling units, if the buildings have one or more elevators
- All ground-floor units in buildings containing four or more units, without an elevator

The Fair Housing Act shouldn't be confused with the Americans with Disabilities Act (ADA).

- The ADA covers public accommodations, while the Fair Housing Act covers housing.
- Many builders and developers believe that if they are ADA compliant then they have fulfilled their legal responsibilities. This isn’t necessarily true.
- ADA does apply to common use areas in residential developments if the facilities are open to persons other than owners, residents, and their guests (sales/rental office, pool, reception room, etc.).
Accessibility Requirements for New Construction

- Local governments are encouraged, but not required, to implement procedures for the review and approval of covered dwellings to determine whether they meet the requirements of the Act.
- When a municipality plays a greater role in the development of new multifamily housing (such as serving as a partner or funder in the development of a subsidized complex), the municipality may be held liable for failure to comply with accessibility requirements.

HUD FHA Design Manual

Fair Housing Accessibility First
Design and Construction Resource Center: 888-341-7781
www.fairhousingfirst.org
- Information on "safe harbors" (sets of access standards that guarantee compliance with the Fair Housing Act)
- Training and other resources

Zoning and Land Use

- The Fair Housing Act prohibits state and local land use and zoning laws, policies, and practices that discriminate based on membership in a protected class.
- Under the FHA, housing includes not only buildings intended for occupancy as residences, but also vacant land that may be developed into residences.

Zoning and Land Use Prohibited Practices

- Treating housing that is likely to be occupied by protected classes less favorably than housing occupied by other residents when making zoning and land use decisions.
- Blocking group homes or multifamily or affordable housing in response to neighbors’ fears or prejudices about persons with disabilities or racial and ethnic minorities.
- Requiring additional studies or procedural steps or unnecessarily delay decision making when considering housing that is likely to be occupied by members of protected classes.
- Refusing to make reasonable accommodations for persons with disabilities in land use and zoning policies and procedures.
- A land use or zoning practice may be found to be intentionally discriminatory even if there is no personal bias on the part of individual government officials. For example, municipal zoning practices or decisions that reflect acquiescence to community bias or fears about members of protected classes may be intentionally discriminatory, even if the officials themselves do not personally hold such views.
- Decisions motivated by a purported desire to benefit a particular group can also violate the FHA if they result in differential treatment because of a protected characteristic.
Even absent a discriminatory intent, local governments may be liable for any land use policy or practice that has an unjustified discriminatory effect because of a protected characteristic.

A land use or zoning practice results in a discriminatory effect if it causes or predictably will cause a disparate impact or creates or perpetuates segregated housing patterns because of a protected characteristic.

Municipalities may designate a zoning district as age restricted, but the district must comply with the HOPA definition—either 80% of households with a resident age 55+ or 100% of residents age 62+.

Local governments that zones an area to exclude families with children must continually ensure that housing in that zone meets the requirements of the exemption. If the zoning district fails to meet HOPA requirements, the government violates the FHA.

Local examples of violations:
- Language expressing an explicit intent to limit impact on the number of children in the school district
- Different use and/or dimensional regulations for age restricted and family housing in the same district
- Age restricted definition other than that permitted by HOPA

A group home refers to a dwelling that is or will be occupied by unrelated persons with disabilities.

- Group homes may or may not provide support services.
- Group homes may be operated by individuals or organizations, either for profit or nonprofit.
- Group homes may or may not include supervision of residents and may or may not be licensed under a particular program.
- Group homes may include persons who are in recovery from alcohol or drug abuse.

Zoning ordinances may not contain provisions that treat uses for people with disabilities differently than other similar uses. Generally, group homes for small numbers of residents housed in single family homes should be treated as single family residences.

Between 2009 and 2014, the Housing Equality Center reviewed zoning ordinances of all municipalities in Bucks, Chester, Delaware, Lehigh, Northampton, and Montgomery Counties. The three most common violations or impediments were:
1) Spacing requirements for group homes or other restrictions where group homes may be located
2) Additional requirements placed on group homes that are not placed on other types of residential development; and
3) Greater density, building coverage or building height permitted or fewer parking spaces required for age restricted housing than for family housing within the same zoning district.

Local governments are required to make reasonable accommodations for persons with disabilities in land use and zoning policies and procedures. An accommodation is “reasonable” if it does not impose an undue financial and administrative burden and if it does not fundamentally alter the zoning ordinance. Unless a municipality can prove that an request is unreasonable according to the above criteria, the municipality must grant the accommodation.

Examples of reasonable accommodations in zoning include:
- Waiving setback requirements for a disabled resident who must build a wheelchair ramp to access his or her home
- Refusing to make an exception to the definition of family to allow a greater number of unrelated persons to occupy a group home

Regional Zoning Analysis
Between 2009 and 2014, the Housing Equality Center reviewed zoning ordinances of all municipalities in Bucks, Chester, Delaware, Lehigh, Northampton, and Montgomery Counties.

48% of the 302 municipalities had ordinances containing impediments to fair housing choice or outright violations of fair housing laws.

The most common violations or impediments were:
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2) Additional requirements placed on group homes that are not placed on other types of residential development;
3) Greater density, building coverage or building height permitted or fewer parking spaces required for age restricted housing than for family housing within the same zoning district.
Zoning Case Examples

Denial of Affordable Housing Complex - PathStone Housing Corp. v. Whitehall Township, PA: Agreement in HUD complaint settled allegations that Whitehall discriminated because of race, national origin, family status, and disability when it denied a proposal to construct 49 units of affordable multifamily housing in the Township.

• Residents opposed the project complaining that an apartment building would crowd and change the makeup of the neighborhood
• Whitehall Zoning Hearing Board denied the project on the basis that there was inadequate parking
• Township paid $375,000 in developer’s legal fees, must actively promote project, and must revise zoning ordinance, removing barriers to affordable housing

Zoning Case Examples

Illegal Spacing Requirement - Horizon House Developmental Services, Inc. v. Township of Upper Southampton, PA: A 1,000 foot spacing requirement for group homes was found to violate the Fair Housing Act. Furthermore, requiring group homes to obtain a variance to locate within 1,000 feet of another group home was found to be an insufficient reasonable accommodation, and the township was ordered to cease enforcement of the spacing requirement.

Unrelated Persons Ordinance & Group Homes - ReMed Recovery Care Centers v. Township of Willistown, PA: Township ordered to make a reasonable accommodation from its limitation on the number of unrelated persons that can constitute a family under its zoning ordinance, allowing a group home of 8 unrelated individuals rather than the 5 permitted under the zoning ordinance.

Updated HUD/DOJ Guidance

On November 10, 2016 DOJ and HUD released updated guidance on Local Land Use Laws and Practices and the Application of the Fair Housing Act

• Designed to help state and local governments comply with the Fair Housing Act when making zoning and land use decisions related to various types of housing, including group homes for persons with disabilities
• Clearer Q&A format outlining what could constitute housing discrimination by municipalities under the Fair Housing Act
• Available at: www.justice.gov/crt/page/file/909956/download

Nuisance and Crime-Free Ordinances and Fair Housing

• Nuisance and crime-free ordinances typically require landlords to abate “nuisance” conduct by a tenant, often by evicting the tenant, under the threat of a penalty such as fines or loss of rental permits.
• “Nuisance” conduct often includes a specific number of calls for emergency services within a specific period of time, either by a tenant or third party such as a neighbor.
• Many ordinances do not exempt calls where the person in need of services is a victim of domestic violence or another crime or otherwise in need of police, medical or other emergency assistance or differentiate whether the resident is a perpetrator or victim of domestic violence of other crimes.

Housing Equality Center of Pennsylvania
equalhousing.org
Fair Housing for Local Governments

Nuisance and Crime-Free Ordinances and Fair Housing

- Both types of ordinances violate the Fair Housing Act when they are enforced to intentionally discriminate because of protected class membership or when they have an unjustified discriminatory effect, even when the government had no intent to discriminate.
- Penalizing residents for 911 calls can have a disparate impact on individuals with disabilities, elderly persons, and victims of domestic violence.
- Pennsylvania law prohibits municipalities from enforcing nuisance ordinances against victims of abuse or crime or individuals in an emergency.

HUD Guidance

In September 2016 HUD released Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services.


Norristown Borough Case Example

Agreement settled allegations that a Norristown nuisance ordinance had a disparate impact based on sex. The ordinance penalized landlords and effectively required them to evict tenants when police were called to a property three times for “disorderly behavior”:
- Resident was threatened with eviction after calling the police several times for protection from abusive ex-boyfriend
- Neighbors called the police after a final severe attack that necessitated the resident be airlifted to the hospital
- Landlord had to either evict her or face a fine of $1,000/day
- Borough paid $495,000 in compensation and legal fees, must repeal ordinance, and must not pass laws punishing residents or landlords for requests for emergency assistance.

Other Fair Housing Considerations for Local Governments

- Enforcing property maintenance and other codes more strictly against members of protected classes is a violation of the Fair Housing Act.
- For example:
  - Municipality initiating code enforcement in some neighborhoods (or against some residents or housing types) vs. responding only to neighbor complaints in others
  - Enforcing occupancy or health and safety standards only against renter occupied housing or group homes for persons with disabilities
  - Retaliatory code enforcement

Code Enforcement

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- Enforcing occupancy or health and safety standards only against renter occupied housing or group homes for persons with disabilities
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Use and Occupancy and Rental Unit Permitting Procedures

- HECP has received multiple complaints from landlords regarding municipalities requesting information that could be used to discriminate and/or information regarding disability in rental licensing or use and occupancy applications or annual notifications.
- Caution should be taken regarding requesting information regarding housing subsidies and details regarding source of subsidy (for example, receipt of housing vouchers when more likely to indicate protected class member, housing assistance for persons with HIV/AIDS, victims of domestic violence, refugee resettlement assistance, etc.).
**Ordinances Regarding Undocumented Immigrants**

- Ordinances making it illegal for landlords to rent to undocumented immigrants (and employers to hire them) and sometimes requiring residents and employees to prove citizenship or legal residency to the municipality
- Various penalties such as fines and loss of rental or business licenses imposed on landlords and business owners for violations
- These laws encourage housing providers to discriminate on the basis of national origin

**City of Hazelton Case Example**

Permanent injunction prohibited Hazleton from enforcing any of the provisions of its restrictive anti-illegal-immigration ordinances which impose a $1,000-per-day fine on landlords who rent to illegal immigrants, revoke the business license of any employer who hires them, declare English as the official language and bar city employees from translating documents to another language without approval.
- After ruling survived appeal, city was ordered to pay $1.4 million in plaintiff’s attorneys’ fees

**Fair Housing and Free Speech**

- Residents may not be prevented from expressing objectionable or bigoted opinions in response to members of a protected class moving into a neighborhood or the development of housing that may be occupied by protected classes.
- However, government officials may be held liable under the Fair Housing Act for their own discriminatory written or verbal statements concerning housing.
- Local government officials are prohibited from infringing on First Amendment rights and have an obligation to hear all opinions expressed by constituents, but also may not rest their decisions on discriminatory ideas or opinions, even when their constituents pressure them to do so.

**Affirmatively Furthering Fair Housing**

From its inception, the Fair Housing Act not only prohibited discrimination in housing related activities and transactions but also imposed a duty on the federal government to affirmatively further fair housing (AFFH).

Because in practice HUD programs have historically perpetuated patterns of racial and economic segregation the AFFH provision seeks to begin to remedy the impact of historical segregation.

**Why do we need AFFH?**

U.S. housing policies historically created and perpetuated segregated housing patterns.

For example, the Home Owners’ Loan Corporation (HOLC), a New Deal initiative established in 1933 to stabilize the housing market.

Green = “Best”
Blue = “Still Desirable”
Yellow = “Declining”
Red = “Hazardous”
The AFFH obligation covers all activities, policies, and procedures of recipients and subrecipients of federal housing funding including Community Development Block Grant entitlement jurisdictions and public housing authorities. These entities are responsible to hold staff and subrecipients accountable for complying with fair housing requirements in all their projects and activities.

On February 9 of this year, HUD published a new proposed rule on Affirmatively Furthering Fair Housing, which replaced the previous fair housing planning processes with an Equity Plan, a modified version of the Assessment of Fair Housing required under the 2015 rule.

Proposed rule is currently in public comment period, through April 10, 2023.

Increasing Fair Housing Choice for Residents

• Make consumer information regarding fair housing rights available to residents
• Offer fair housing compliance resources to housing providers
• Elected officials, staff, zoning board members, and members of other boards or committees should receive training on fair housing

• Review zoning ordinances and nuisance or crime-free housing ordinances to ensure that they do not contain Fair Housing Act violations or impediments to housing choice
• Seek legal advice if there is any question as to whether an ordinance is consistent with fair housing laws
Increasing Fair Housing Choice for Residents

- Implement practices to ensure fair public meetings when there is community opposition to proposed housing for members of protected classes or to ordinance changes that increase access to housing for protected classes.
- Take advantage of community participation opportunities when fair housing planning is undertaken by CDBG entitlement jurisdictions.

Fair Housing Guide for Local Governments


Housing Equality Center of Pennsylvania

Founded in 1956, before state or federal fair housing legislation, the Housing Equality Center of Pennsylvania is America’s oldest fair housing council.

The Housing Equality Center serves the Pennsylvania counties of Bucks, Chester, Delaware, Lehigh, Montgomery, Northampton, and Philadelphia.

Housing Equality Center

The Housing Equality Center provides:
- Counseling, testing investigations, and enforcement services to assist victims of housing discrimination.
- Education, training programs, and technical assistance for housing professionals, nonprofits, housing authorities and others to promote compliance with fair housing laws and to prevent discrimination.
- Publications, fact sheets and resources to educate the public and housing professionals about fair housing.

Report Discrimination

(267) 419-8918

Consumers, providers, and advocates should contact the Housing Equality Center of Pennsylvania to report discrimination. The Housing Equality Center accepts and investigates complaints from anonymous sources.

Fair housing complaints can be filed with HUD for up to one year from the incident, or with the Pennsylvania Human Relations Commission for up to 180 days from the incident. A lawsuit may be filed in Federal Court up to two years from the incident.

equalhousing.org

- Sign up for fair housing news
- Register for an upcoming fair housing event or meeting
- Learn about fair housing laws
- Download guides, resources, fact sheets, and fair housing guidance
- Request fair housing training or print materials for your clients, constituents, or colleagues
- Report discrimination online
Fair Housing for Local Governments

**renters.equalhousing.org**
- Information and self-advocacy resources for renters in PA
- Learn about fair housing rights
- Learn about tenant rights and responsibilities
- Guidance on how to deal with common landlord tenant problems
- Customizable letters to download for a variety of situations

**landlords.equalhousing.org**
- Learn about how Pennsylvania Landlord Tenant and federal and state fair housing laws apply to providers of rental housing
- Avoid common and costly fair housing violations
- Download sample letters, forms, posters, and other resources

**Fair Housing Questions? Technical Assistance?**

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