

## The Responsibilities of Municipalities under the Federal Fair Housing

OCCD Spring Meeting on April 27, 2022

Presenter: John Zimmerman – [john.zimmerman@mvfairhousing.com](mailto:john.zimmerman@mvfairhousing.com)

Miami Valley Fair Housing Center 937-223-6035

Email [info@mvfairhousing.com](mailto:info@mvfairhousing.com)

Visit [www.mvfairhousing.com](http://www.mvfairhousing.com)



---

---

---

---

---

---

---

---

### Fair Housing and Protected Classes

- Federal: race, color, national origin, familial status, sex, disability and religion
- Ohio: Military Status and Ancestry
- Common Local protected classes: sexual orientation, gender expression, source of income, age and marital status



---

---

---

---

---

---

---

---

### Fair Housing Prohibitions

- Refuse to sell or rent
- Discriminate in the terms, conditions
- Discriminate in advertising
- Misrepresent the availability of housing
- Engage in blockbusting or steering
- Refuse people w/disabilities physical & regulatory modifications
- Discriminate in making loans, insurance policies, appraisals, & other real estate transactions
- To coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of a fair housing right



---

---

---

---

---

---

---

---

***Municipalities and Fair Housing***

- Municipalities carry out four broad categories of activities that affect their fair housing responsibilities:
- Regulatory Activities,
- Provision of Services,
- Provision of Subsidies, and
- Proprietary Activities




---

---

---

---

---

---

---

---

***Regulatory Activities***

- When a municipality enacts and administers regulations that affect existing or potential residential properties usually through zoning or building/housing codes.




---

---

---

---

---

---

---

---

***Regulatory violation that can trigger problems with fair housing laws***

- If the county/ state gives HOME dollars to assist with an effort to house homeless/disabled people needing supportive home sites to a developer, but
- a zoning rule cuts the provider/developer and its clients out of their housing choice,
  - such as requiring the approval of the neighboring residents, or
  - restricting the number of unrelated people that can reside in one unit in violation of fair housing laws
- **A complaint can be triggered.**




---

---

---

---

---

---

---

---

***Provision of Subsidies***

- Financial incentives offered to residential property owners such as grants, loans, or loan guaranties for rehab or building projects;
- Special services such as infrastructure projects or housing rehabilitation services using funds like CDBG.




---

---

---

---

---

---

---

---

***Proprietary Activities***

- When a municipality buys or sells real property, particularly if the property was used or will be used as a residence.
- Eminent domain acquisitions can have fair housing consequences




---

---

---

---

---

---

---

---

***Proprietary & Subsidy Activity: Violations that trigger problems with fair housing laws***

- If federal funds "pass-through" the municipality, like HOME funds or Community Development Block Grant Funds (CDBG) AND
  - these are used in connection with housing development,
  - the selection of sites for affordable housing in a county have to be spread out over all of the jurisdictions and cannot be limited to certain zip codes with a higher poverty or higher minority demographics.




---

---

---

---

---

---

---

---

*Provision of Services*

- When a municipality provides routine services in residential areas or to residents.
  - Water, sewer, trash pickup etc.




---

---

---

---

---

---

---

---

*Services Activity: Violations that trigger problems with fair housing laws*

- No system for processing requests for reasonable accommodations might trigger a complaint.
- Denial of water service – Coal Run and Zanesville case




---

---

---

---

---

---

---

---

**Cautionary Note**

- Cities that receive federal funding either directly or indirectly should have a policy of reasonable accommodation/reasonable modification for their residents to access in a variety of communication forms.
- Recipients of federal funds are subject to many other civil rights laws that require their programming be “programmatically accessible” both under Section 504 of the Rehabilitation Act, Title III of the ADA and more.
  - Reasonable Accommodation Ordinance, City of Santa Rosa, Ordinance 3582 for residents is a good model.
- See Next slide for opening statement of applicability -




---

---

---

---

---

---

---

---

### Santa Rosa - 20-02.310 Applicability.

- A request for reasonable accommodation may be made by any person with a disability, their representative or any entity, when the application of a zoning law or other land use regulation, policy or practice acts as a barrier to fair housing opportunities.
  - A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities,
  - anyone who is regarded as having such impairment or
  - anyone who has a record of such impairment.
- This Chapter is intended to apply to those persons who are defined as disabled under the Acts.




---

---

---

---

---

---

---

---

### Recent Case - Disability

- *United States v. City of Jacksonville* (M.D. Fla.) 2017 Consent Decree by Federal <https://www.justice.gov/crt/case/united-states-v-city-jacksonville-md-fla>
- the City has amended its zoning code to better comply with federal anti-discrimination laws,
- including removing restrictions that apply to housing for persons with disabilities and
- implementing a reasonable accommodation policy.




---

---

---

---

---

---

---

---

### More results of consent decree

- The City has agreed to rescind the written interpretation that prevented [a housing provider named] Ability Housing from providing the housing at issue,
- designate a fair housing compliance officer,
- provide Fair Housing Act and Americans with Disabilities Act training for City employees, and
- pay a \$25,000 civil penalty to the government.




---

---

---

---

---

---

---

---

### In a separate settlement

- the City agreed to pay \$400,000 to Ability Housing and \$25,000 to Disability Rights Florida, an advocate for people with disabilities, and
- to establish a \$1.5 million grant to develop permanent supportive housing in the City for people with disabilities.




---

---

---

---

---

---

---

---

### The Complaint

- The complaint alleged that the City of Jacksonville refused to allow the development of housing for individuals with disabilities in its Springfield neighborhood.
- In 2014, Ability Housing, Inc., a non-profit affordable housing provider, was awarded a \$1.35 million grant to revitalize a 12-unit apartment building and create "permanent supportive housing" for "chronically homeless" individuals in the City who, by definition, have at least one disability.
- The complaint alleged that the City had previously certified that this use was consistent with the City's zoning code, but the City reversed itself in response to intense community pressure based on stereotypes about prospective residents with disabilities.




---

---

---

---

---

---

---

---

### The Complaint

- The complaint alleged that as a result, Ability Housing lost the grant and the property.
- The complaint also alleged that the City retaliated against Ability Housing when, in response to Ability Housing's private FHA/ADA suit against the City, the City told a local nonprofit that it was prohibited from funding Ability Housing with money the nonprofit received from the City.




---

---

---

---

---

---

---

---

***Affirmatively Furthering Fair Housing or AFFH  
– All Parties to Federal Affordable Housing \$’s***

- must make an affirmative plan with concrete actions to remove the barriers in a community that prevent people, based on a protected class status, from have **limited choice** and **limited availability** in housing.
- These identified **barriers** are called “**impediments to fair housing choice.**”
- **Before we explain this, let’s look at a another recent Municipal Fair Housing case that will give AFFH, context**



---

---

---

---

---

---

---

---

**Recent Rulings**

- Familial Status: <https://www.justice.gov/crt/case/united-states-v-city-arlington-nd-tex>
- United States v. City of Arlington (N.D. Tex.).
- Court entered a consent Order **January 18, 2022**



---

---

---

---

---

---

---

---

**Results of the Consent Decree, The City will**

- pay \$395,000 in damages to a developer of LIHTC properties
- maintain a non-discrimination policy for future LIHTC developments,
- provide Fair Housing Act training to certain city officials, and
- submit to compliance and reporting requirements for three years.



---

---

---

---

---

---

---

---

The complaint alleged City of Arlington, Texas violated the Fair Housing Act (FHA) by

- discriminating on the basis of familial status when it blocked the development of an affordable housing project for families with children that had been proposed by a developer, Community Development, Inc. (CDI), and would have been financed using federal Low-Income Housing Tax Credits (LIHTC).
- The complaint alleged that the City refused to issue a Resolution of Support or a Resolution of No Objection to CDI because the City had a policy of supporting LIHTC developments only for new senior housing intended for persons 55 years of age or older.




---

---

---

---

---

---

---

---

---

---

Background

- In 2016, the City of Arlington adopted a policy to determine which projects would be considered for the federal program. As a part of the City's policy, the legislators wrote that Arlington "has a preference for new development of senior housing or redevelopment of senior and/or workforce housing."
- While the language on its face reads as a "preference" as contrasted with a mandate, HUD asserts **City officials made statements** illustrating that this "preference" was actually a requirement and that, in fact, the City would only approve a project if it addressed senior housing needs. In its complaint, HUD references comments from city representatives noting that the[re] was no desire for these residents to live near a three year old or an eight year old.
- see: <https://www.jdsupra.com/legalnews/hud-files-familial-status-26721/>




---

---

---

---

---

---

---

---

---

---

Keep up to date with new Fair Housing developments in policy and regulation

- Fair Housing Act Design and Construction Requirements; Adoption of Additional Safe Harbors March 8, 2021  
<https://www.federalregister.gov/documents/2020/12/08/2020-26376/fair-housing-act-design-and-construction-requirements-adoption-of-additional-safe-harbors>
- Appraisal Fair Housing Compliance and Updated General Appraiser Requirements November 27, 2021  
<https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-27hsgml.pdf>
- Interim Rule: Restoring Affirmatively Furthering Fair Housing Definitions and Certifications June 10, 2021  
<https://www.federalregister.gov/documents/2021/06/10/2021-12114/restoring-affirmatively-furthering-fair-housing-definitions-and-certifications>
- Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act - Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation February 11, 2021  
[https://www.hud.gov/sites/dfiles/PA/documents/HUD\\_Memo\\_EO13988.pdf](https://www.hud.gov/sites/dfiles/PA/documents/HUD_Memo_EO13988.pdf)




---

---

---

---

---

---

---

---

---

---



**Affirmatively Furthering Fair Housing (AFFH) practices includes:**

- “effect on July 31, 2021, because HUD funding recipients **must certify compliance with their duty to AFFH on an annual basis ....**”
- “(HUD) publishes this interim final rule to **restore certain definitions and certifications...**that are grounded in legal precedent to its regulations implementing the Fair Housing Act’s requirement to affirmatively further fair housing (AFFH) and
- **reinstate a process by which HUD will provide technical assistance** and other support to funding **recipients who are engaged in fair housing planning** to support their certifications.”




---

---

---

---

---

---

---

---

**Affirmatively Furthering Fair Housing (AFFH) best practices includes:**

- Prohibitions of discrimination of named protected classes
- A requirement to advance desegregation
- Ensure a fair housing lens is applied to the development of municipal policy so that policy and action are inclusive and discrimination does not occur by omission of a protected class from city services via written or unwritten policies, actions, statements and procedures
- Develop policies that do not have a disparate impact on protected classes (see next slide)




---

---

---

---

---

---

---

---

**Disparate Impact is**

- A practice has [an illegal] discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status or national origin.




---

---

---

---

---

---

---

---

### Best Practices

- Apply a Fair Housing Lens to all segments of Planning and Development
- Use Your Current Impediments to Fair Housing when applying that lens
- Participate in your upcoming Analysis of Impediments to Fair Housing




---

---

---

---

---

---

---

---

### Definitions

- “Impediments” are any actions, omissions, or decisions taken which have the effect of restricting a person’s housing choice by protected class:
  - Race, color, national origin, religion, disability, sex, familial status, and local protected classes
- “Barriers” to housing choice are factors that limit a person’s ability to choose from a variety of housing types.
  - Factors may include housing supply and location, physical accessibility of housing, zoning for group homes, source of income, accessibility of financing, and limited English proficiency to name a few.




---

---

---

---

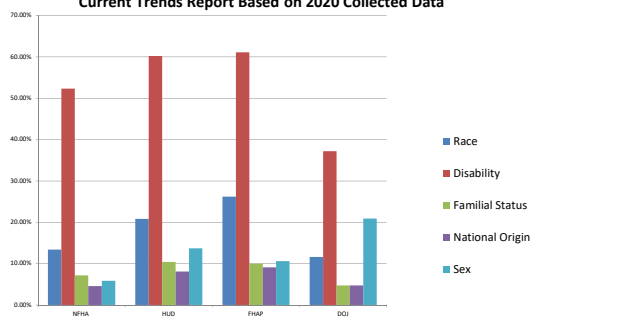
---

---

---

---

Current Trends Report Based on 2020 Collected Data




---

---

---

---

---

---

---

---

### Notes on Report

- Complaints alleging discrimination because of
- Disability 54.56 %.
- Race-based 16.79 %, and
- Familial status 7.93 % of complaints




---

---

---

---

---

---

---

---

### Example - 2015 Regional AI

The 2015 Regional AI is a comprehensive review of municipal housing, economic conditions and transportation conditions as well as public and private sector policies to determine whether they support or impede housing choice and opportunities for all persons in the region of **Montgomery County, the City of Dayton and The City of Kettering, Ohio.**

- <http://mvfairhousing.com/ai2015/>




---

---

---

---

---

---

---

---

### Identified Impediments

- **Impediment One: Disability** — The region’s supply of affordable housing that is accessible to persons with disabilities is inadequate.
- **Impediment Two: Disability** — Most newly constructed multi-family housing is not compliant with the Fair Housing Act’s accessible design and construction requirements.
- **Impediment Three: Disability** — People with disabilities experience a fair housing barrier when they encounter a complicated process while requesting reasonable accommodations or modifications.




---

---

---

---

---

---

---

---

### Identified Impediments

- **Impediment Four: Transit** — Public transit service is a barrier to fair housing because it is largely limited to higher-density and developed areas, limiting housing choice and employment opportunities.
- **Impediment Five: Race, Ethnicity and Color** — Racial segregation is a persistent impediment of fair housing in the region due to income disparity, dual housing markets, and continued steering in the real estate market based on color, race and ethnicity.
- **Impediment Six: National Origin** — Immigrants and refugees face barriers to housing choice and housing availability.




---

---

---

---

---

---

---

---

### Identified Impediments

- **Impediment Seven: Housing Marketing** — Non-compliance with Fair Housing advertising guidelines still exists.
- **Impediment Eight: Local Regulatory Issues** — Regulatory policies and zoning guidelines exist that do not comply with the Fair Housing Amendments Act of 1988 and are a barrier to housing choice and housing availability.
- **Impediment Nine: Fair Housing Education and Enforcement** — Ignorance and/or incorrect understanding of fair housing laws and of new regulations is a barrier to fair housing.
- **Impediment Ten: Systemic Lending Issues** — REO disposition policies and procedures are a barrier to fair housing.




---

---

---

---

---

---

---

---

### Identified Impediments

- **Impediment Eleven: Industries that Interconnect with Residential Homeownership** — Discriminatory practices in real estate, mortgage lending, residential appraisal, and homeowner insurance markets exist which limit housing choice and availability.
- **Impediment Twelve: Children in the Household** — Familial status, or the presence of children under 18 within the household, continues to limit housing availability and choice for families.
- **Impediment Thirteen: Public Sector** — The selection process for siting public and affordable housing in the region is a barrier to housing choice and housing availability for low-to-moderate income families with children and people with disabilities.




---

---

---

---

---

---

---

---