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GUIDE for
ELECTED OFFICIALS

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INTRODUCTION

This GUIDE IS FOR PUBLIC OFFICIALS, including elected officials, planning commission members, planners and other staff for cities and counties in Oregon who seek to understand their role in addressing neighborhood conflicts over residential uses related to fair housing. When such conflicts arise, public officials often find themselves in the middle, acting informally as arbiters or more formally as decision-makers. This guide is intended to help you understand your role and stay on the right side of the law. While there is no “app” for creating inclusive, welcoming neighborhoods that are safe places to live and raise families, new knowledge and understanding can help build a strong foundation for productive engagement. *This guide aims to provide that information.*

From our ancient roots as hunters and gatherers, we human beings are hard-wired to be wary of situations that are unfamiliar and people who seem different from us. We also have a sense of territory. Instinctually, we feel an impulse to exert control over areas we consider belong to us.

Fortunately, we’re also hard-wired to want to live in a community. The communitarian impulse supports our efforts to figure out how to get along and to seek benefit from associating with those who have abilities and insights different from ours. It takes hard work to navigate our differences and reach solutions that provide an acceptable level of personal security for everyone. The first step starts with communication.

When changes are planned for a neighborhood, whether it is a single house, a new apartment complex or a new institution such as an assisted care facility, sometimes neighbors object. They may not oppose the proposed project per se, but they may object to its location in their neighborhood. They may believe it belongs somewhere, as long as it is somewhere else.

Sometimes opposition is based on non-discriminatory factors—fact-based concerns about traffic, for example—that do place an undue burden on a neighborhood. However, opposition can also represent a desire to avoid having to deal with people who are viewed as being “different.” Sometimes external impacts like traffic and parking problems masquerade as rationales for opposition when the real motivation is a desire for social exclusivity.

While supporting the development of an inclusive community is an art, not a science, there are some clear rules, based in federal and state law, which govern what is lawful and what is not. This guide provides guidance on those fair housing rules.

This **GUIDE FOR ELECTED OFFICIALS** is one of a series of three guides that provide practical, experience-based information to stakeholders who may become involved with local opposition to new housing or new neighbors. The other two guides are:

- **GUIDE FOR NEIGHBORS**
- **GUIDE FOR HOUSING PROVIDERS**

THIS GUIDE HAS FOUR SECTIONS

1.



THE BASICS

An introduction to fair housing as it relates to inclusive communities

2.



FAIR HOUSING, AFFORDABLE HOUSING AND HOUSING FOR PEOPLE WITH DISABILITIES

An introduction to the two types of housing developments where concerns around fair housing are especially likely to surface

3.



INFORMATION FOR ELECTED OFFICIALS

How to engage constructively and stay on the right side of the law

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RESOURCES

Information about other guides and key resources for those who wish to go deeper

SOURCING

This guide draws extensively from guides produced for other states and audiences. For ease of reading, we have elected to not cite specific sources in the body of this guide, but included them in the list of resources that forms the final chapter. We wish to thank and recognize the many sources whose work provided the foundation for this guide.



Interspersed throughout are **MYTHS AND FACTS + STORIES FROM THE FIELD** that use examples of things that actually occurred in Oregon to illustrate the main ideas.

1. THE BASICS



This section of the guide provides an introduction to fair housing concepts and touches on some of the most common rules that come into play when a new housing development or a change in use of an existing residential use sparks concerns in a community about the kinds of new neighbors who may move into the area.

INTRODUCTION

Neighborhoods are changing all the time. Neighbors move in and out and businesses come and go as well. For some, change can be challenging and can make people feel uneasy or conjure up fears of the unknown. But change can also be an opportunity. This guide focuses on the opportunity to channel change in a way that fosters inclusive communities.

Fair housing laws ensure access to housing opportunities for all, regardless of their backgrounds, beliefs or abilities. In effect, fair housing laws help identify which issues can be legally addressed when community concerns arise, and which infringe upon the rights of others not yet living in the neighborhood. Neighborhood activists, public officials, city staff and developers all need to understand the law. The law helps to achieve a balance between existing neighbors' concerns and the right of all people to access a range of housing options and neighborhoods.

FAIR HOUSING AND PROTECTED CLASSES

The purpose of fair housing laws is to provide access to housing choice by everyone, free from discrimination. The federal Fair Housing Act makes it unlawful to discriminate against people seeking to obtain housing. A wide range of housing-related activities are covered by fair housing law, including renting, selling, lending, zoning and providing insurance. Under national fair housing laws, it is illegal to deny access to housing to people because of their race, color, national origin, religion, gender, familial status (the presence of children in a household) or disability. These seven characteristics are called the federal protected classes. In Oregon, it is also illegal to discriminate in housing transactions based on a person's marital status, source of income (including, as of July 1, 2014, Housing Choice/Section 8 Vouchers), sexual orientation (including gender identity) or status as a domestic violence victim—Oregon's protected classes. Some cities and counties have identified additional local protected classes that apply within their boundaries.

Being a member of a protected class does not give someone the right to engage in unlawful activities. For example, if someone who is disabled or a person of color commits a robbery, he/she is subject to arrest and prosecution just like anyone else. The Fair Housing Act affords no protections

DEFINITION

in·clu·sive

adjective \in-'klü-siv, -ziv\
: open to everyone : not limited to certain people

com·mu·ni·ty

noun \kə-'myü-nə-tē\
: an interacting population of various kinds of individuals in a common location

Source:

www.merriam-webster.com/dictionary

to individuals who present a direct threat to others. Determining whether someone poses such a direct threat must be made on an individualized basis, however, and cannot be based on general assumptions or speculation about a group of people or how individuals who are part of that group (such as people with mental health disabilities) might act.

Nor do fair housing laws (with one exception, special accommodations for people with disabilities, discussed in a later section) convey special privileges or rights to an individual based on his or her membership in a protected class. The intention of federal, state, and local fair housing laws is to require that all individuals be given the same treatment, the same services, and offered an equal opportunity to live in a home of their choice.



PROTECTED CLASSES

FEDERAL

- race
- color
- national origin
- religion
- gender
- familial status
(the presence of children in a household)
- disability

STATE

- marital status
- source of income
- sexual orientation
- status as a domestic violence survivor

THE BASICS



FAIR HOUSING AND TYPES OF DISCRIMINATION

Fair housing law protects against three kinds of discrimination:

Direct Evidence: Actively and openly limiting access to housing on the basis of protected class. An example of direct evidence would be the refusal to rent to someone solely because he was born in Saudi Arabia and is Muslim. That would represent discrimination on the basis of national origin and religion.

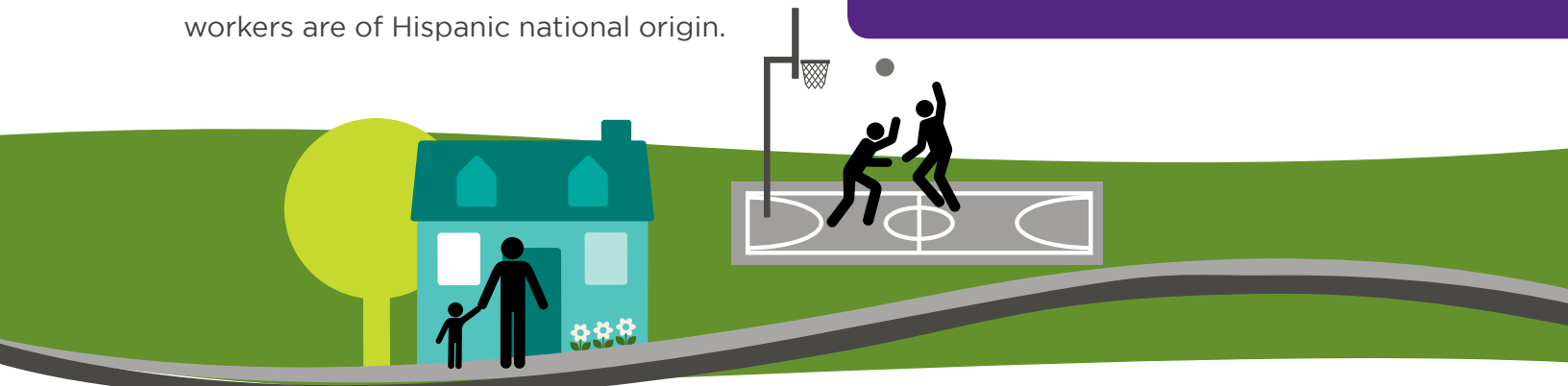
Unequal Treatment: Treating people differently based on protected class status; for example, requiring a renter with two children to pay twice the security deposit of a renter without children is discrimination on the basis of familial status.

Disparate Impact: Having a discriminatory effect on a protected class while appearing to treat everyone the same. For example, giving preference to renting to households with people who don't work in the local fish cannery would have a disparate impact on the Latino population if the vast majority of cannery workers are of Hispanic national origin.



THE FAIR HOUSING ACT

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, codified at 42 U.S.C. 3601-3619), as amended, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18) and disability. At the urging of President Lyndon B. Johnson, Congress approved the Civil Rights Act of 1968, and it was signed into law one week after the assassination of Dr. Martin Luther King, Jr.



DID YOU KNOW?

Deed restrictions were used to prohibit the sale of homes in certain areas to people of color and, in some cases, people from specific national origins. Such restrictions are now null and void by virtue of the Fair Housing Act of 1968.



DISPARATE IMPACT AND LAND USE LAWS

It is important to note that a practice does not need to be intentionally discriminatory for it to be in violation of fair housing laws. One of the complicated realities of American culture is that discriminatory practices—practices that have disproportionately negative effects based on protected class—have occurred for decades before fair housing laws were adopted. Discriminatory practices are so deeply imbedded in our institutions, traditions and ways of doing business that it can be hard to identify and isolate them. We continue those institutions and practices, unwittingly perpetuating their negative effects.

One of the main ways that the concept of disparate impact affects neighborhood quality is through zoning ordinances and practices. Fair housing laws prohibit land use regulations, restrictive covenants and conditional or special use permits from imposing special conditions that have the effect of limiting housing choice based on protected class status. In the past, deed restrictions were used to prohibit the sale of homes in certain areas to people of color and, in some cases, people from specific

national origins. Upheld as legal by a Supreme Court decision in 1917 (*Buchanan v. Warley*, 245 U.S. 60 (1917)), such restrictions are now null and void by virtue of the Fair Housing Act of 1968. A more contemporary example of a policy that would have a disparate impact is requiring an applicant seeking to build a single-unit house for five unrelated people who have disabilities (a protected class) to undergo additional hearings, reviews or community meetings that are not required for a single-unit house for any other group of five unrelated individuals.

A recent example of disparate impact and jurisdictional involvement is the *Mount Holly v. Mount Holly Gardens Citizens in Action, Inc.*, in which the Township of Mount Holly planned to tear down existing housing to build higher-end housing. The citizens who lived in the existing housing protested, saying that they would not be able to afford to live in the new housing and this would have a disparate impact on the township's minority population. The citizen group sued the jurisdiction under the Fair Housing Act, citing disparate impact. The case was settled in favor of the citizen group before it reached the Supreme Court.

THE BASICS



REASONABLE ACCOMMODATION FOR PEOPLE WITH DISABILITIES

As mentioned above, people with disabilities do have an extra privilege under fair housing to ensure that they can access equal housing opportunity. The Fair Housing Act requires housing providers respond to requests for reasonable accommodations. These are exceptions to rules, policies, practices or services to enable people with disabilities to live in the residence. This includes physical modifications to make the residence accessible. Local officials are also required to consider reasonable accommodations to zoning, building codes and ordinances.

Local jurisdictions are required to make case-by-case determinations about what is reasonable based on the facts of the particular case under consideration. For example, the accommodations required to assist people with mobility impairments may be different from those needed to assist people with loss of hearing. In neither case could basic health and safety precautions be set aside, nor could the general nature of the zoning of the neighborhood be changed.

WHAT DOES DISABILITY MEAN?

There are many different definitions of disability. The one relevant to fair housing is the one included in the Fair Housing Act, which states that someone is disabled if he or she has a physical or mental impairment which substantially limits one or more major life activities, including having a record of or being regarded as having such impairment (42 U.S.C. 3602 (h)).

FREE SPEECH AND PUBLIC DECISIONS

Fair housing laws require that public decisions about housing developments not be based on the race, color, religion, sex, national origin, familial status or disability of the residents. It also prohibits public decisions and policies that have a disproportionate impact on members of one or more protected classes.

Community members have the right, under First Amendment free speech protections, to express their opposition to projects on any

basis (as long as it does not constitute illegal intimidation). However, land use and other public decisions may not be made on the basis of concerns based upon discriminatory assumptions. Local officials, including staff, may only make their decisions based on fact-based, non-discriminatory factors. Furthermore, the law prohibits the public from asking for information about the extent or type of disability an individual or group of individuals may have.

CONCLUSION

The creation of safe, inclusive communities—places where people from a variety of backgrounds and abilities can thrive—is more of an art than a science. It involves achieving a delicate balance among many different pairs of opposing forces, such as:

- The desire of longstanding residents to control their community’s future vs. the desire of newcomers to have housing choices
- The need to apply laws equally to all vs. the requirement to be flexible around the margins if so requested by someone with a disability (reasonable accommodation).



CONFRONTING EMBEDDED DISCRIMINATION?

Stella Adams, a fair housing consultant from Durham, North Carolina, compares deeply imbedded discriminatory practices from the past that continue into the present to sour dough starter that incorporates some toxic yeast. When new loaves are made from the starter, the bad yeast is baked in to the new loaves, even though the baker had no idea that toxic yeast was present. Furthermore, the bad yeast is incorporated into the dough left over to make new starter for the next batch of loaves. Getting rid of the bad leavening requires a conscious choice and hard work to create a fresh, clean batch of “mother” sourdough starter.



2. FAIR HOUSING

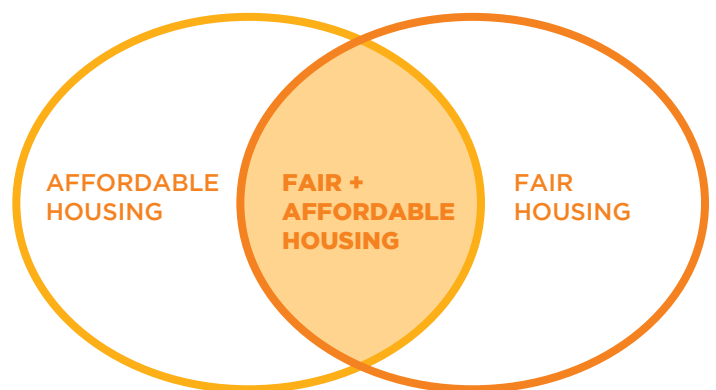


Fair housing issues may arise with respect to any kind of housing development and in any kind of neighborhood. For example, opposing a mosque's efforts to partner with a developer to create a new apartment complex in the neighborhood would likely be a fair housing violation if the objection based on not wanting people who practice Islam to move into the neighborhood. A city that refuses to permit the development of a high-end assisted living facility for adults with Alzheimer's disease based on the complaints of neighbors who don't want to live next door to "crazy people who wander" would also likely be a violation of fair housing laws based on disability.

While fair housing issues may arise in many different kinds of situations, there are two kinds of housing developments where both neighborhood resistance and fair housing issues may surface: subsidized/low cost/low income/affordable housing (it goes by many names) and projects serving people with disabilities (also called special needs housing). This chapter considers both in some detail.

THE OVERLAP BETWEEN FAIR HOUSING AND SUBSIDIZED HOUSING

In most communities, the majority of people who need subsidized housing are also people whose access to housing choice is protected under fair housing law. For example, in many communities, a greater share of people of color (race, national origin and color) may need subsidized housing than the majority population; thus, in this community, the rejection of subsidized housing would have a disparate impact on people of color. The reasons for this are complex and have deep historical roots related to decades of discriminatory practices that impacted the life opportunities of people of color and other groups, as well as contemporary patterns and institutional practices that have a disparate impact. The diagram below illustrates the overlap, or nexus, between fair housing and subsidized housing.



Rejecting a housing project on the grounds that it will serve low income people is, in most instances, a violation of fair housing because that decision would have the effect of discriminating against people on the basis of their membership in a protected class, regardless of whether or not the discrimination was intentional. In other words, that decision would have a disparate impact on minority populations protected under fair housing laws.

While the nexus between fair housing and affordable housing is a key principle, it is also important to remember that people who are not low-income can also experience housing discrimination. For example, during the housing crisis of the last decade, people of color in some cities tended to be offered riskier home mortgages (with higher interest rates and, in most cases, a greater likelihood of default) than the majority population with similar incomes. While these homebuyers of color were not low income, they likely experienced discriminatory practices in the mortgage lending market.



MORTGAGE DENIAL RATES DIFFER IN OREGON BY RACE AND ETHNICITY

In Oregon's rural communities, blacks and Hispanics with incomes above \$75,000 per year had much higher denial rates for home purchase mortgage applications than their white counterparts. In 2004 - 2008, the denial rate for home purchase mortgage applications for whites was 17.0%; during the same period, the denial rate for blacks was 30.1% and for Hispanics was 25.6%.

Source: 2011-2015 Oregon Analysis of Impediments to Fair Housing Choice (Non Entitlement Areas), p. 42, Table III-6.
www.oregon.gov/LCD/docs/publications/introductory_guide_to_land_use_planning_in_oregon.pdf





FAIR HOUSING PROTECTIONS FOR THE DEVELOPMENT OF AFFORDABLE HOUSING

Fair housing laws affecting the development of affordable housing revolve around a few essential principles:

- Housing that serves people who are members of protected classes (minority populations) cannot be put through extra steps or be required to pay extra fees or meet criteria that are not required of housing that serves the majority population (everyone else). The “minority population” can be defined in terms of one or more of the seven federal protected classes or Oregon’s protected classes. Thus, it would be illegal for a jurisdiction to require developers of multifamily affordable housing to meet with neighbors if it did not require the same of all multifamily housing developers. (Unequal Treatment)
- It is illegal to have laws that seem neutral on the surface but result a disproportionate cost or delay for housing that serves minority populations. (Disparate Impact)
- Outright discrimination is also illegal, such as prohibiting the development of affordable housing in the jurisdiction.

It is important to remember that people in protected classes must follow rules and regulations that govern the rest of

the population. People cannot use fair housing as an excuse for breaking the law. Furthermore, fair housing does not protect people who pose a direct threat to people or property. The law requires that such determinations be based on objective proof of a threat by specific individuals and not generalizations about a population.

HOUSING FOR PEOPLE WITH DISABILITIES

Another category of housing that often triggers initial opposition is housing that serves people with disabilities or special needs housing. The reaction is often based on fear of people who seem “different.” The first step is to recognize the potential for having a fear-based reaction and make the conscious choice to move beyond it to facts, understanding, and community.

Since the 1960s, there has been a cultural change in the US involving the movement away from placing people with disabilities, or those recovering from alcohol and drug addictions, into large institutions. As a result, an increasing proportion of people with a wide range of disabilities—physical, mental health, developmental—live in communities, either in traditional housing or in staffed homes with services, depending on the individual.

There are many different types and names for specialized housing with services for people with disabilities, including supportive

MYTH

Affordable housing always lowers property values in the surrounding neighborhood.



FACT

How affordable housing affects nearby properties is complicated. In 2005, the *Journal of Planning Literature* published an authoritative review of seventeen academic studies that occurred over 40 years regarding the impact of subsidized housing on neighborhood property values. The author concluded:

- Housing that was acquired and rehabilitated as affordable housing had a positive effect on nearby property values.
- Subsidized housing had no effect on nearby property values when it was sited in healthy and vibrant neighborhoods, when it was dispersed, and when it had responsive, responsible management. Conversely, negative effects on property values were more likely to occur when affordable housing was clustered and located in declining neighborhoods.
- When negative effects do occur, they were relatively small, especially compared to other factors that affected property values.

Source: Nguyen, M.T. (2005). Does affordable housing detrimentally affect property values? A review of the literature. *Journal of Planning Literature* 20:15, DOI: 10.1177/0885412205277069





housing, group homes and community residential facilities. Examples include:

- Group homes for persons recovering from alcohol or drug addiction
- Residential treatment facilities for persons with a mental illness
- Adult foster homes for older adults needing assistance with activities of daily living
- Group homes for adults or children with developmental disabilities

In addition to these clear-cut examples, there are a variety of other living arrangements which may not, on the surface, appear to house people with disabilities, but which do so in fact. One example is transitional housing for formerly homeless individuals. While homelessness is not in and of itself considered to be a disability, many individuals who are homeless may have one or more disabilities. Others may be members of a protected class in Oregon by virtue of being a survivor of domestic violence. A disproportionate share of homeless youth are gay, bisexual, lesbian, transsexual or queer, and sexual orientation and gender identity are protected classes in Oregon. Thus, on a case-by-case basis, fair housing protections may extend to a wide variety of congregate living situations.

FAIR HOUSING PROTECTIONS FOR THE DEVELOPMENT OF HOUSING FOR PEOPLE WITH DISABILITIES

In addition to the protections for affordable housing described above, there are several additional principles that underlie fair housing as it applies to the development of housing for people with disabilities, including:

- **REASONABLE ACCOMMODATION:** As discussed in Chapter 1, the Fair Housing Act requires local governments to make minor modifications to local regulations (including zoning and land use regulations) if so requested, if doing so affords equal housing opportunity to people with disabilities. For example, a developer might request an exception to a required setback that would enable a wheelchair ramp with the proper slope to be installed.
- **NO QUOTAS:** The Department of Justice has advised local jurisdictions that setting quotas on the number or share of housing units that serve people with disabilities within a geographic area is a fair housing violation. The only time that jurisdictions may consider issues related to the concentration of people with disabilities within an area is when such concentration may work to the disadvantage of people with disabilities.



MYTH

Affordable housing is ugly and will quickly become an eyesore.

FACT

Perceptions about the design and construction of affordable housing project are often based on memories of old public housing projects, some of which were, indeed, built cheaply (by Congressional mandate) and were unattractive. Much has changed since then; in Oregon, the emphasis has been on building sturdy, attractive and highly functional housing for many years now. Nonprofits and public agencies that build affordable housing are in it for the long haul; it makes sense for them to use durable materials and maintain the properties, as they are long-term owners and not in this business to make money and sell the property to a new owner. Affordable housing developments that are well built, blend into the neighborhood and well maintained can be among a neighborhood's assets.



- **CONFIDENTIALITY:** Just like everyone else, people with disabilities have a right to privacy with respect to their medical information. Housing providers cannot disclose the nature of the disability that individuals have.

OREGON STATE LAW AND RESIDENTIAL HOMES AND FACILITIES

While each jurisdiction has its own zoning code and other rules that govern the location and development of housing for people with disabilities, Oregon also has adopted laws on this subject with which jurisdictions must comply. These state laws

provide specific protections but are not as broad as federal fair housing law. Thus, it is necessary, but not sufficient, that local codes comply with Oregon law.

Specifically, Oregon law requires that jurisdictions make licensed residential homes a permitted use in all residential zones and also in any commercial zone that allows single-family dwellings (ORS 197.660). A permitted use is a one that is allowed outright in a particular zone and does not require additional review to see if it meets extra criteria. A classic example of a permitted use is a single-family home in an area zoned for single-family residences.

FAIR HOUSING



A licensed residential home is defined as a home that is licensed by the state and serves no more than five individuals with mental health disabilities or addictions (residential treatment homes) or developmental disabilities (residential training homes). It also includes adult foster homes that serve five or fewer adults needing residential care in a homelike environment (ORS 443.400). The licensing agencies are the Oregon Health Authority, the Oregon Department of Human Services and the Oregon Department of Human Services or Health Authority for treatment homes, training homes and foster homes, respectively.

Fair housing laws provide even greater protections than the state protections for residential homes. Many different types of homes with disabled persons are not and do not need to be licensed. Many people that fall under the Fair Housing Act's definition of "disabled" have a high degree of self-care, and, while they may not need the level of service provided in a licensed home or facility, they may find group living situations beneficial. Permitting and zoning restrictions that directly target these unlicensed group homes or group living situations are a violation of the Fair Housing Act.

Thus in residential zones, a group home that serves five or fewer disabled individuals must be treated in the same way that a single-family home that serves five or fewer unrelated individuals would be treated. Jurisdictions may not require additional

review, hearings or meetings or impose additional standards on the group home.

Oregon state law also requires jurisdictions to make licensed residential facilities—facilities licensed to serve six or more individuals with physical, mental health or developmental disabilities (defined in ORS 443.400)—a permitted use in any zone where multifamily housing is a permitted use. They must also be either a permitted or conditional use in zones where multifamily housing is a conditional use (ORS 197.667).

KEY CONCEPTS

In general, people who need subsidized housing are also people whose access to housing choice is protected under fair housing law.

- **There are many myths surrounding affordable or subsidized housing and the people who reside there.**
- **Affordable housing does not automatically lower property values on the properties in the surrounding neighborhoods; property values depend on the current health of the neighborhood and a host of other factors.**
- **Affordable housing is more often than not attractive and well maintained.**
- **An increase in the number of low income people into a neighborhood does not necessarily translate into an increase in crime.**





CRIMINAL HISTORY

One attribute that is frequently of concern is NOT a protected class: involvement with the criminal justice system. The federal Department of Justice advises:

The disability discrimination provisions of the Fair Housing Act do not extend to persons who claim to be disabled solely on the basis of having been adjudicated a juvenile delinquent, having a criminal record, or being a sex offender. Furthermore, the Fair Housing Act does not protect persons who currently use illegal drugs, persons who have been convicted of the manufacture or sale of illegal drugs, or persons with or without disabilities who present a direct threat to the persons or property of others. (Joint Statement of the Department Of Justice and the Department Of Housing And Urban Development regarding Group Homes, Local Land Use, And the Fair Housing Act).

It is important to note that some re-entry housing developments serve people with addictions or other disabilities by design, and thus fair housing protections (such as the requirement to make reasonable accommodations if requested) would apply. However, this does not mean that the residents may lawfully continue to use illegal substances or commit any other kind of offense that would otherwise be considered a crime.

Source: Joint Statement of the Department Of Justice and the Department Of Housing And Urban Development regarding Group Homes, Local Land Use, And the Fair Housing Act, www.justice.gov/crt/about/hce/final8_1.php

MYTH

An increase in the number of people who have lower incomes means more crime.

FACT

That's not what the research says. In *Memphis Murder Mystery Revisited: Do Housing Voucher Households Cause Crime?* researchers at New York University's Furman Center tracked voucher holders and their impact on neighborhood crime. Using neighborhood-level data for 10 cities across the nation, the authors, "refute the notion that rising numbers of voucher holders contribute to increasing rates of neighborhood crime... They also found no association between the arrival of voucher holders in a neighborhood and the incidence of crime one year later."

Source: National Low Income Housing Coalition, <http://nlihc.org/article/studies-examine-effects-affordable-housing-crime-patterns>

In Oregon, in residential zones, group homes that serve five or fewer disabled individuals must be treated in the same way that a single-family dwelling is treated.

In Oregon, jurisdictions are required to make licensed residential facilities serving six or more individuals with disabilities a permitted use in any zone where multifamily dwellings are a permitted use.

3. INFO FOR ELECTED OFFICIALS



When conflicts arise about land use issues in neighborhoods, public officials—elected officials, planning commission members, planners, public administrators and other staff—often find themselves in the middle, acting informally as arbiters or more formally as decision-makers. On one hand, they are called to understand the neighbors’ wishes to manage their surroundings; on the other hand, they are called to respect and uphold the rights of those seeking to provide housing for some of the community’s hardest to house residents. In this endeavor, public officials must be guided not only by their own judgment, but also by laws and professional standards of conduct associated with their professions. One area of law with which public officials need to be familiar is fair housing. This chapter addresses how fair housing laws come into play in neighborhood disputes.¹

As the introductory chapter indicates, it is illegal to deny access to housing to people because of their protected class status, regardless of whether that status arises from federal, state² or local law. More proactively, fair housing is about ensuring that people have access to the full array of housing’s benefits (including resource- and opportunity-rich neighborhoods) regardless

of personal characteristics related to protected classes.

While these basic ideas may seem straightforward, the difficulty arises in applying them to real situations in the community. So many decisions involve judgment calls about what constitutes a reasonable request and what constitutes an effort to make it difficult, if not impossible, to develop a new project serving people whom neighbors view as being somehow different from themselves. When in doubt, ask for help. The Fair Housing Council of Oregon welcomes your inquiries. We would much rather help you avoid missteps than seek remedial action in response to a complaint from an aggrieved party.



FAIR HOUSING COUNCIL OF OREGON
1 (800) 424-3247
www.fhco.org

¹ This chapter is especially indebted to the information provided by Tracey McCartney, Tennessee Fair Housing Council, in her guide *Navigating NIMBY: A Public Official’s Guide to Neighborhood Living for People with Disabilities*, Summer 2003. www.tennfairhousing.org/resources

² The most recent change to Oregon’s protected classes has the effect of making it illegal to discriminate against someone because the source of their rent is derived from a Housing Choice (Section 8) Voucher, effective July 1, 2014.



TIP

If your jurisdiction uses a land use review committee, look closely at who serves on the committee. Less informed citizen members, although well intentioned, can run afoul of fair housing provisions and create a potential liability for the jurisdiction.

THE ROLES OF PUBLIC OFFICIALS

As a public official, you play an important leadership role in the community. If you are an elected or appointed public official, you make important decisions that affect the welfare of both individuals in your community and your community as a whole. You also have access to “the bully pulpit” as a means of affecting community sentiment and expressing new ideas. If you are an elected leader, constituents may come to you for help or leverage in addressing their concerns.

If you are staff, you play an important role in upholding, interpreting and explaining laws and rules that have been adopted for the benefit of the community overall. You are on the front line—you are the ones most likely to first encounter the angry response of neighbors who discover a new project proposed for their neighborhood or who are upset with the behavior of other neighbors.

Your job is to walk the line between responding to legitimate community concerns about safety and neighborhood conditions on one hand and protecting the rights of all residents to have fair access to housing opportunities in communities of

their choice on the other. Here are some suggestions on how to find that balance:

- 1. Listen to what neighbors have to say.** Community members have the right, under First Amendment free speech protections, to express their opposition to projects on any basis (as long as it does not constitute illegal intimidation).
- 2. Never make land use or other decisions based upon discriminatory statements made by community members.** The courts have repeatedly found such decisions to be in violation of fair housing laws. Taking such action may result in costly legal fees, fines and damages charged to your jurisdiction.
- 3. Be aware of, and nip in the bud, efforts to delay a project through requests from neighbors for repeated meetings to rehash topics already discussed and addressed.** At public meetings, balance the need to permit free speech with the right to be free from intimidation. Mentally place yourself in the audience, as a potential resident of the proposed housing development, as a way to monitor



if and when the testimony strays into intimidation. Efforts to delay a project can lead to extra costs for the developer and threaten its viability. Stalling tactics based on an illegal objective, lacking a reasonable basis in law or fact or having an improper motive are violations of the Fair Housing Act (*U.S. v. Wagner*, 940F, Supp 972 (N.D. Texas 1996)).

- 4. Be aware of efforts to delay or overburden a project through raising facially “neutral” issues (such as parking concerns) which have little basis in fact.** Over the years, it has become less socially acceptable to raise concerns about a project based on the race, ethnicity, national origin or disability status of the likely residents. Thus, neighbors are likely to find other ways to raise concerns about a project. When you hear concerns about things like parking, sight lines and setbacks, ask yourself whether such objections would be raised if the project were to be occupied by a different population. Sometimes such objections are raised to stall the project and drive up the cost of development.
- 5. If a public hearing is part of a quasi-judicial proceeding, remind speakers that a decision can be made solely on the basis of whether a particular project conforms to pre-established criteria.** If speakers stray into other areas, you can remind them that testimony not related to

those criteria cannot be considered by the decision-makers.

- 6. Take appropriate action to address legitimate complaints that the residents of any home or apartment building, including subsidized or special-needs housing, are engaging in conduct that is dangerous or a nuisance.** Fair housing does not give anyone free rein to disregard the law. Disturbances of the peace, violent behavior, trespassing and other offenses should be addressed. The complaints must be addressed on the basis of the behavior of specific individuals, and not on stereotypes about how “those people” behave.
- 7. If your jurisdiction receives federal housing funds, be aware of your responsibility to affirmatively further fair housing.** If you are not familiar with it already, find out about your Analysis of Impediments to Housing Choice and the actions that your community has proposed to promote access to housing opportunities for everyone.





COMMON FAIR HOUSING MISTAKES AND HOW TO AVOID THEM

In an effort to be responsive to constituents or to reduce community conflict, it is all too easy to stray into practices which may, in fact, have a discriminatory effect on protected classes or otherwise violate fair housing laws. This section describes common mistakes and the steps that public officials can take to avoid or rectify them.

Requiring that affordable/subsidized housing projects undergo additional approval steps, hearings, meetings with neighbors or other processes not required for similar multi-unit housing developments.

Public officials and staff may not impose extra steps or meetings, and you may not condition your approval upon the developer taking any extra steps. For example, you may not require an affordable housing developer to meet with the neighborhood association if you do not require the same of developers of for-profit housing projects.

Requiring affordable/subsidized housing projects to have extra screening, setbacks or other design modifications you do not require of for-profit housing projects.

For example, if a neighbor were to complain about having “those people” move in, you may not require the affordable housing project to build a fence, plant screening shrubbery or provide a bigger setback if those same requirements would not impose upon a project with a similar form in the same zone.

AFFIRMATIVELY FURTHERING FAIR HOUSING

All jurisdictions that receive federal funds of any kind (not just housing) are required to take steps to affirmatively further fair housing. At its most fundamental, the term *affirmatively furthering fair housing* means going beyond not discriminating to actively promoting access to homes in resource and opportunity-rich communities by those who historically have had the fewest housing choices, and to invest in bringing higher quality services and resources to neighborhoods that have such populations and individuals. If your jurisdiction receives federal housing funds directly from the US Department of Housing and Urban Development, then, in most cases, you have also adopted an Analysis of Impediments to Housing Choice and a corresponding plan describing actions to address the identified impediments. In this case, affirmatively furthering fair housing mean something specific; it means implementing those actions and documenting them and other steps that your jurisdiction has undertaken to address the impediments.



Placing burdensome public safety requirements on affordable housing or housing for people with disabilities.

To quote the law, fair housing does not provide protection to “an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others” (42 U.S. Code § 3604(f)(9)). Thus, a jurisdiction may impose reasonable protections to ensure the safety of the community as a whole. However, the concerns upon which the protections are based must be fact-based. The concerns may not be based on assumptions, generalizations or stereotypes about a population as a whole, and the protections must be reasonable.

The courts have provided guidance on reasonableness. For example, a court in Utah found that requiring a group home for developmentally disabled adults to have 24-7 supervision and a community advisory panel to address complaints to be intentional discrimination. The court found that the city did not place similar requirements on other communal living arrangements and that the requirements were not justified by actual public safety concerns (46 F.3d 1491 (10th Cir. 1995)).

Interfering with funding for an affordable or fair housing project.

Often applicants for funding for affordable

or special needs housing are required to submit documentation that their plans conform to local zoning codes. Withholding or delaying certifications or other documentation that the developer needs could be considered discrimination, especially if the underlying reason for doing so is itself discriminatory (for example, because of objections to the project by neighbors).

Again, a court case provides a relevant example. In *Fu v. City of Clyde Hill*, an operator of a home for adults with disabilities requested documentation from the city certifying that that her home would not be in violation of the local zoning ordinance. Her bank loan was denied because the city would not provide that documentation. The court held that the town’s failure to provide the letter was a violation of fair housing laws (FH-FL Rptr. 16.195(W.D.Wash. March 7, 1997)).

Treating group homes in a neighborhood zoned for single dwelling units differently from any other housing for unrelated people living together in a single unit.

The remedy here is straightforward: do not impose any use restrictions, notice criteria, design requirements or siting criteria on group homes that you do not apply to other group living situations, such as a group of unrelated people renting a house together or a homeowner who provides or rents space to housemates. If there are

TIP

Neighbors need a place to air their grievances; however, monthly meetings on the same subject with the same opposition only creates hardship for the affordable housing provider. Be clear on what is not negotiable.

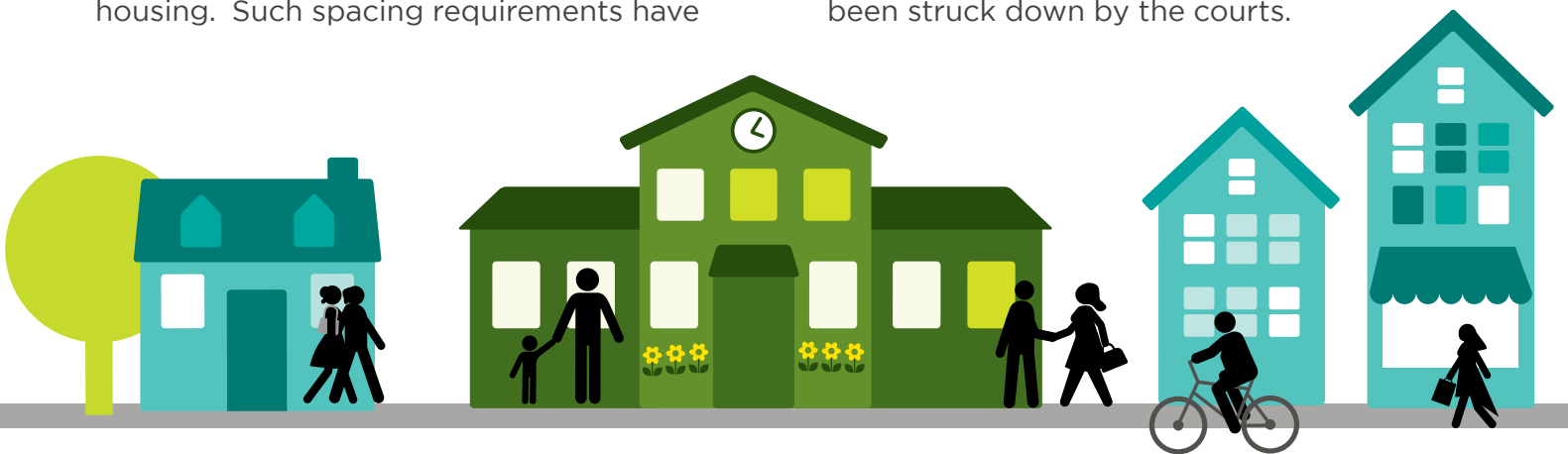
conflicts between neighbors, and one of the neighbors happens to be a group home, you may refer them to a Community Dispute Resolution Center, just as you might offer this referral to other neighbors who have conflicts. You may not, however, make an approval contingent upon a successful resolution of a conflict involving a group home if you do not also follow this approach with other neighbors.

Imposing dispersion or spacing requirements for housing for people with disabilities.

In an effort to prevent the concentration of special needs housing for people with disabilities in a particular neighborhood, some cities may consider imposing dispersion requirements that require a designated amount of space between such housing. Such spacing requirements have

been found to be in violation of the Fair Housing Act because they limit housing choice for people with disabilities. (See, for example, *Larkin v. State of Michigan*, 89 F.3d 285 (6th Cir. 1996)).

A fundamental principle of the Fair Housing Act's protections is that people with disabilities should be able to live in an integrated residential setting of their choice. The only way that dispersion requirements have been found to be acceptable by the courts is if they result in an environment beneficial for the disabled residents by avoiding segregation and clustering (*Familystyle of St. Paul v. City of St. Paul, Minnesota*, 923 F.2d 91 (8th Cir. 1991)). However, in most cases, dispersion requirements have been found to be in violation of the Fair Housing Act and have been struck down by the courts.





PROVIDING REASONABLE ACCOMMODATIONS FOR PEOPLE WITH DISABILITIES

To ensure that people with disabilities have access to a full range of housing opportunities, fair housing law enables them or their representatives to ask for a reasonable accommodation—a departure from a general rule or practice—to adapt or develop housing that is accessible.

According to the federal Department of Justice, whether or not a request for an accommodation based on disability is reasonable depends on the answers to two questions:

- **Does the request impose an undue burden or expense on the local government?**
- **Does the proposed use create a fundamental alteration in the zoning scheme [or other regulation]?** For example, does it allow a fundamentally different kind of use, such as a large skilled nursing facility in a single family neighborhood?

If the answer to either question is “yes,” then the requested accommodation may be considered unreasonable. This is a very complex and nuanced topic (for example, how does one determine whether a burden or expense is “undue?”) with a substantial amount of case law informing it.

FAIR HOUSING LAND USE AND ZONING CHECKLIST FOR OREGON

The Fair Housing Council of Oregon has developed a checklist for local jurisdictions to use in reviewing their land use and subdivision ordinances and related practices. Called *Examining Local Land Use with a Fair Housing Lens*, the checklist helps jurisdictions both identify problem areas and add new best practices. It is a “living tool” in that it is updated as the Fair Housing Council assists local jurisdictions with code-related issues and discovers additional issues and best practices. The most recent version of the checklist can be found on the Fair Housing Council of Oregon’s website:

www.fhco.org/pdfs/AFFHfhco1.pdf



DID YOU KNOW?

Failure to provide reasonable accommodations is a violation of the Fair Housing Act. If this occurs, contact the Fair Housing Council of Oregon for assistance.

Local jurisdictions are encouraged by the Department of Justice to specify, provide and publicize the availability of mechanisms for requesting a reasonable accommodation. These processes may not impose significant costs or delays. If your jurisdiction does not specify a mechanism, applicants for people with disabilities can still request a reasonable accommodation. Inordinate delay or failure to respond to such a request is a fair housing violation.

COMMUNITY DISPUTE RESOLUTION PROGRAMS

Some communities may find it helpful to engage the services of a Community Dispute Resolution Program to help work through concerns with respect to a new or existing housing project. These community-based organizations, some of which are affiliated with city government, have trained staff and volunteers who provide a neutral forum and a facilitated process for addressing conflict. Community dispute resolution is a way to raise difficult issues in a non-confrontational way and work toward finding a solution that all parties can accept.



COMMUNITY-BASED DISPUTE RESOLUTION CENTERS IN OREGON

In Oregon, 22 of the state's 36 counties are served by one or more community-based dispute resolution centers that provide a neutral forum for resolving conflict. A current list of centers can be found through Oregon Office for Community Dispute Resolution at the University Of Oregon School Of Law:

www.osbar.org/_docs/public/cable/commdispute.pdf





One of the potential outcomes of a community dispute resolution process is a voluntary Good Neighbor Agreement, which lays out the rules each party agrees to follow to avoid conflict and be good neighbors, as well as steps to take if problems do arise.



RESOURCES ABOUT REASONABLE ACCOMMODATIONS

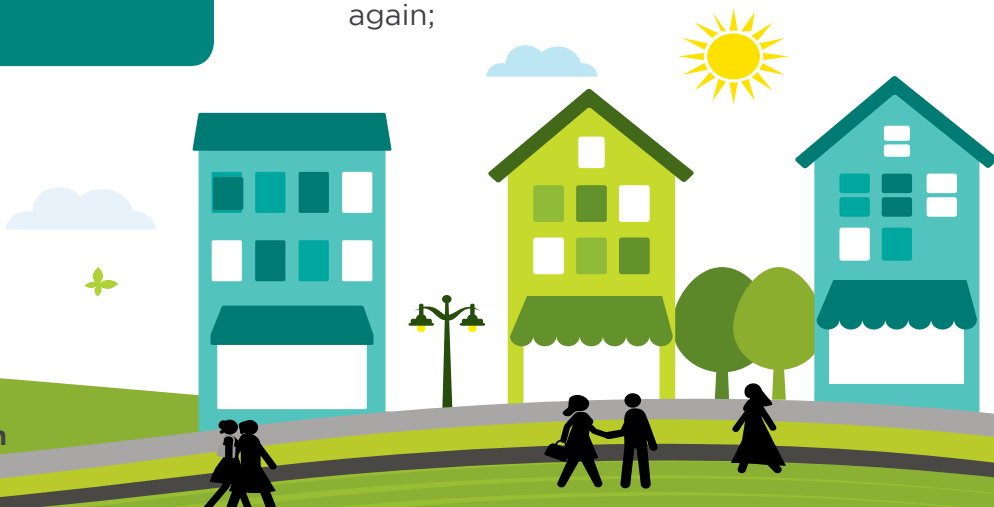
Joint Statement of the Departments of Justice and of Housing and Urban Development on Group Homes, Land Use, and the Fair Housing Act

Joint Statement of the Department of Housing and Urban Development and the Department of Justice—Reasonable Accommodations under the Fair Housing Act, May 17, 2004.

www.justice.gov/crt/about/hce/about_guidance.php

KEY CONCEPTS

- Public officials, including elected officials and Planning Commission members as well as staff, often finds themselves in the middle of conflict over the development of affordable/subsidized housing or special needs housing.
- Be aware of common fair housing mistakes, especially those that place burdensome requirements on housing for people with special needs.
- Engage the services of a Community Dispute resolution program if it exists in your community.
- It is important to maintain a balance by doing the following:
 - Listen to what the neighbors have to say;
 - Never make land use decisions on discriminatory statements made by community members;
 - Be aware of and stop any efforts to delay a project through neighborhood requests for repeated meetings to discuss the same topics over and over again;



- Be aware of effort to delay a project through raising facially neutral issues such as parking or traffic;
- If a public hearing is part of a quasi-judicial proceeding, remind speakers that a decision can be made solely on the basis that the project conforms to established criteria;
- Take appropriate action to address legitimate complaints of neighbors; and,
- Be aware of your responsibility to affirmatively further fair housing if your jurisdiction receives federal funding.

CONCLUSION: FROM NIMBY TO ACCESS TO OPPORTUNITY

In the decades since the passage of the Fair Housing Act, the emphasis has begun to change from a focus on the prevention and elimination of discriminatory practices (eliminating a negative) to proactively supporting access to opportunity through enabling a wider variety of housing and neighborhood choices for those who historically and economically have had the fewest choices (pursuing a positive).

Housing is a platform—a location in a particular place and a safe haven—for pursuing life’s opportunities. Housing situates people in a particular place, with a particular set of nearby assets like schools, in a particular environment (healthy and safe, unhealthy and unsafe or somewhere in between), and among a particular group of people. Denying people the opportunity to live where they can thrive based on their race, color, religion, national origin, sex, disability, or family status perpetuates cycles of poverty and despair and represents both a huge loss of human potential and a crime.

At first, integration may not be easy or comfortable for those on the front lines—not for the neighbors who may be reluctant to experience change, nor for the new people moving in. As public officials, you have the opportunity to promote patience, dialogue and understanding. You also have the responsibility of upholding the law. We encourage you to use the resources at your disposal, including our office, to help promote fair access to opportunity through housing in your community.



4. RESOURCES



The information available online on fair housing and inclusive communities continues to expand. Entering the search terms “Fair Housing” and “NIMBY” (which stands for Not in My Back Yard, a term commonly used to describe neighborhood opposition to a project being located in that neighborhood) into a web browser will yield resources which can be scanned to determine which ones are from reliable sources, such as state fair housing agencies, national nonprofits and academic sources.

In this dynamic information environment, a comprehensive list of resources would soon be out of date. Thus, the information in this chapter represents an annotated selection of key resources, including ones used in the development of this guide. While all links are current as of publication of this guide in July 2014, they, too, may change over time.

ESSENTIAL RESOURCES FROM THE DEPARTMENTS OF HOUSING AND URBAN DEVELOPMENT AND JUSTICE

Fair Housing Act, As Amended:
www.justice.gov/crt/about/hce/title8.php

List of Fair Housing Laws from HUD’s Office of Fair Housing and Equal Opportunity:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws

Department of Justice Fair Housing Policy Statements and Guidance:
www.justice.gov/crt/about/hce/about_guidance.php

Department of Justice Overview of Fair Housing Act and Enforcement Measures:
www.justice.gov/crt/about/hce/housing_coverage.php

OREGON-SPECIFIC MATERIALS

City of Portland, Office of Neighborhood Involvement (2012).

Community Residential Siting Resources.

www.portlandoregon.gov/oni/32417

Before it was discontinued in 2012, the Community Residential Siting Program provided guidance to neighbors and housing providers on siting affordable housing and housing for difficult-to-house populations in Portland and Multnomah County. Four practical resources are still available on the website above: information for neighbors, recommended public involvement guidelines, community involvement strategies, and site selection guidelines for post-incarceration facilities. Some of the information references Portland zoning code and may not be applicable elsewhere, but much of the information is relevant throughout the state.

Fair Housing Council of Oregon (2014).

Examining Local Land Use With a Fair Housing Lens: An Evaluation Tool for Planners, Policy Makers and Other Practitioners.

www.fhco.org/pdfs/AFFHfhco1.pdf

A checklist for reviewing zoning codes and current planning practices based on both fair housing laws and Oregon state land use laws and administrative rules.

GENERAL GUIDES

Pratt, Sara and Allen, Michael. (2004).

Addressing Community Opposition to Affordable Housing Development: A Fair Housing Toolkit. Housing Alliance of Pennsylvania.

www.housingalliancepa.org/resources/111

At 80 pages, a very thorough guide to understanding and responding to neighborhood concerns about affordable housing. This guide addresses the following topics: zoning and land use, free speech, community information campaigns and government opposition. The sidebars contain relevant examples, information about best practices, practice-related hints, and detailed information about topics mentioned in the text. The list of resources (10 pages) includes websites, articles and books, and cases. This is a good resource to have bookmarked on your computer.



RESOURCES FOR NEIGHBORS

Tennessee Fair Housing Council. (2003). Good Neighbors, Healthy Communities.
www.tennfairhousing.org/resources

A guide about housing for people with disabilities written for neighborhood residents. Using research findings, it addresses common misconceptions about the impact of group homes and other housing for people with disabilities on neighbors and neighborhoods. It also includes chapters on relevant laws, the rights of neighbors who live near housing for people with disabilities and frequently asked questions.

RESOURCES FOR PUBLIC OFFICIALS

McCartney, Tracey. (2003). Navigating NIMBY: A Public Official's Guide to Neighborhood Living for People with Disabilities. Tennessee Fair Housing Council.
www.tennfairhousing.org/resources

One of the few guides available specifically for elected officials. It includes a clear, logical presentation of the laws and significant cases, myths and truths about people with disabilities and a thoughtful chapter on the role of public officials.

Voelker, Robert. (n.d.). Utilizing the Fair Housing Act to Counteract NIMBY. Shelterforce Online. National Housing Institute.
www.nhi.org/online/issues/fairhousingmonth.html#Resources

A brief but very useful article that describes the kinds of actions by local governments and local officials that courts have found to be in violation of the Fair Housing Act. Includes a list of resources.

RESOURCES FOR HOUSING PROVIDERS

Connelly, Joy. (2005). Yes, in My Back Yard: A Guide for Ontario's Supportive Housing Providers. HomeComing Community Choice Coalition.

www.homecomingcoalition.com

While the laws governing housing choice are different in the US and Canada, the underlying human dynamics are similar. This guide provides step-by-step suggestions for housing developers. Of particular interest are the fifteen predictable objections and how to deal with them.

Corporation for Supportive Housing. (2006). Thinking Beyond NIMBY: Building Community Support for Supportive Housing.

www.csh.org/wp-content/uploads/2012/07/BeyondNIMBYpdf.pdf

A guide for providers of supportive housing—affordable housing with services for people who face complex challenges with daily living. Includes a variety of strategies for overcoming community fears, including ideas for ways to link to outside resources. Concludes with a case study and a list of additional publications.

Housing Assistance Council. (2005). Telling Our Story: Marketing Affordable Housing.

Rural Voices (10) 1.

www.ruralhome.org/storage/documents/voicesspring2005.pdf

The Spring 2005 edition of *Rural Voices*, the publication of the Housing Assistance Council, includes ten articles about how to advocate for affordable housing within communities, with funders and with local residents in rural areas.

John Jay College of Criminal Justice. (2009). In Our Backyard: Overcoming Community Resistance to Reentry Housing.

www.jjay.cuny.edu/TOOL_KIT_1-NIMBY_FINAL.pdf

This guide introduces the magnitude of the challenge of finding housing for people released from jails and prisons. The principal focus is a detailed case study of The Castle, a reentry project undertaken by the Fortune Society in New York City, and the more broadly applicable best practices learned from it. The publication also includes a list of resources related to on reentry housing and related topics.

4. RESOURCES



RESOURCES FOR HOUSING PROVIDERS CONTINUED

OneCPD Resource Exchange (n.d.). NIMBY Risk Assessment and Decision Tree Tool (online resource).

<https://onecpd.info/resources/nimbyassessment>

An online resource for developers of housing, with or without supportive services, targeted to homeless individuals. The user completes an online questionnaire about current concerns, and the tool leads to targeted case studies that address the identified issues.

Tennessee Fair Housing Council. (2003). A Place to Call Home: Addressing Opposition to Homes for People with Disabilities in Tennessee Neighborhoods.

www.tennfairhousing.org/resources

A guide for providers of housing for people with disabilities. One of the best features of this guide is a thorough discussion of the comparative advantages and disadvantages of high profile and low profile approaches to siting. Other chapters present an overview of relevant laws, myths and truths (backed by research findings) and other issues related to siting, including a discussion of “fair share.”

NOTES





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(503) 223-8197