

QUICKNOTES

Planning and Fair Housing

The concept of “fair housing” in the United States is rooted in the federal Fair Housing Act. This law prohibits discrimination in the selling, renting, and financing of housing. It also requires state and local governments to take actions to promote diverse, inclusive communities. While the Fair Housing Act does not preempt local planning or zoning, some common land-use planning and zoning techniques are incompatible with fair housing goals. The following sections provide an overview of local obligations under federal law and highlight three recommendations for local land-use policy.

Background

In April 1968 President Lyndon B. Johnson signed the Fair Housing Act into law as Title VIII of the Civil Rights Act of 1968. The original version of the law prohibited housing discrimination on the basis of “race, color, religion, or national origin,” and subsequent amendments in 1974 and 1988 further prohibited discrimination due to sex, disability, or familial status (i.e., pregnancy or the presence of children under the age of 18). Furthermore, many states have adopted fair housing laws that prohibit discrimination on the basis of sexual orientation, marital status, or other statuses not covered by the Fair Housing Act.

Generally speaking, federal and state fair housing laws ban both differential treatment and differential effects. Differential treatment refers to any policy or action that denies or complicates access to housing based on a protected status. For example, if a local planning commission denied a use permit for a new multifamily development because that development would house persons with disabilities, it would be vulnerable to a claim of differential treatment. Meanwhile, differential effects (or disparate impacts) refer to any seemingly neutral policy or action that has a greater effect on one or more protected groups. For example, if local officials only permit three-bedroom apartments in a small area of the community, households with multiple children may have a harder time finding housing than households without children.

The Fair Housing Act also requires state and local governments to make “reasonable accommodations” in land-use and zoning policies and procedures when such accommodations are necessary to allow disabled persons equal opportunities to use and enjoy housing. These “reasonable accommodations” are determined on a case-by-case basis, but common requests include minor deviations from zoning standards to allow accessibility modifications to an existing residence or to permit a group of unrelated disabled persons to live together in a low-density residential district. In general, requests for accommodation that pose an undue financial or administrative burden or requests that would undermine the underlying principles of a zoning code are not “reasonable.”

Affirmatively Furthering Fair Housing

Beyond the prohibitions on discrimination and requirements to make reasonable accommodations, the Fair Housing Act also requires all state and local governments who receive federal funds to “affirmatively further fair housing.” However, because the Act did not define this phrase, communities often came to very different conclusions about their obligations. In response to requests for greater clarification and perceptions of inconsistent implementation, the U.S. Department of Housing and Urban Development (HUD) issued a new rule in July 2015 that clarifies the meaning of “affirmatively further fair housing” (AFFH) and establishes a new process to help communities assess barriers to fair housing choice.

The AFFH rule specifies that HUD funding recipients must take actions that would be reasonably expected to help reverse historic patterns of segregation, increase fair housing choice, and foster access to economic and social opportunity. Under this rule, all local governments must periodically conduct an Assessment of Fair Housing (AFH) using HUD’s AFH Tool in order to maintain eligibility

Brett VA, (high point housing choice; Flickr, CC BY 2.0)



Seattle's High Point neighborhood demonstrates how a mix of housing types can support fair housing choice for a diverse population.



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for housing and urban development funds. This tool combines questions with a mapping portal to help participants identify patterns of—and the factors contributing to—segregation, concentrated poverty, disparities in access to opportunity, and disproportionate housing needs. Although the results of this analysis will point to different potential actions for different communities, there are a few widely accepted recommended land-use and zoning practices to help cities and counties make progress toward fair housing goals, which are discussed in the following sections.

Make Space for Different Types of Housing

Some of the most common barriers to fair housing access are zoning provisions that make it difficult to build an adequate supply of affordable housing in high economic- and social-opportunity locations. This can happen when multifamily residences are only permitted in a very small area of a jurisdiction. More commonly, it can happen when cities and counties adopt large minimum lot size or floor area requirements—or poorly calibrated off-street parking space requirements—that make it infeasible to develop anything other than large, single-family homes, surrounded by extensive private yards, across a large area of a jurisdiction. Therefore, communities that permit a range of housing types, including multifamily residences, small lot residences, and manufactured homes, in a variety of locations have taken an important step to minimize the potential for differential effects of zoning.

Avoid Overly Restrictive Definitions of ‘Family’

In order to prevent overcrowding, many communities have adopted zoning codes that limit the number of unrelated people who can live together in a single residence. This is most commonly accomplished through a restrictive definition of the word “family.” Whether intentional or not, restrictive family definitions can have a discriminatory effect on blended families, unmarried couples, disabled persons, or small groups of unrelated individuals who need to share housing costs (e.g., single parents with children or recent immigrants). Consequently, communities that revise their definitions of “family” to accommodate various types of functional family equivalents have decreased the likelihood of differential treatment.

Treat Small Group Homes as Residences

When communities classify all group housing arrangements as institutional or commercial uses, they often severely limit the permissible locations for small group homes. At a minimum, cities and counties must permit small group homes that satisfy the local definition of “family” wherever other single-family residences are allowed. However, communities that revise their definitions and zoning standards for group housing (with or without redefining “family”) to permit small group homes for disabled persons in all locations where single-family homes would be permitted are proactively addressing the requirement for reasonable accommodation.

Conclusions

Since the adoption of the Fair Housing Act in 1968, local governments have had a legal obligation to promote diverse, inclusive communities, and planners and local officials have numerous opportunities to support fair housing choice through land-use and zoning policies and procedures. Through the adoption and administration of local plans and zoning regulations, they can work to eliminate differential treatment and differential effects, and they can establish a framework for community growth and change that affirmatively furthers fair housing goals.

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FURTHER READING

1. Published by the American Planning Association

American Planning Association. 1997. “APA Policy Guide on Community Residences.” Available at planning.org/policy/guides/adopted/commres.htm.

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Knapp, Gerrit, et al. 2007. *Zoning as a Barrier to Multifamily Housing Development*. PAS Report No. 548. Chicago: American Planning Association. Available at planning.org/publications/report/9026873.

2. Other Resources

Iñiguez-Lopez, Diego. 2014. *Realizing the Promise: How to Affirmatively Further Fair Housing*. New York: The Opportunity Agenda. Available at tinyurl.com/jdg3ys7.

U.S. Department of Housing and Urban Development. 2017. “Affirmatively Furthering Fair Housing.” Available at huduser.gov/portal/affht_pt.html.

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