

# Fair Housing Laws

Prepared for: Citizen Planner Training Collaborative



MODULE

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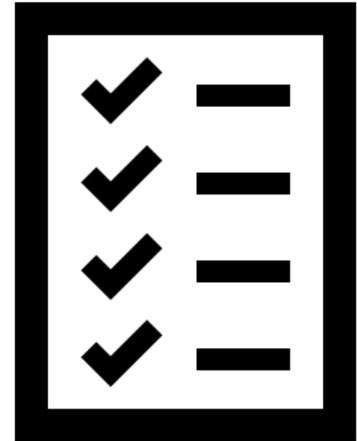


# Introduction

Introduction  
COURSE  
OBJECTIVES:  
SLIDE 1 OF 2

The workshop will address the following questions or topics:

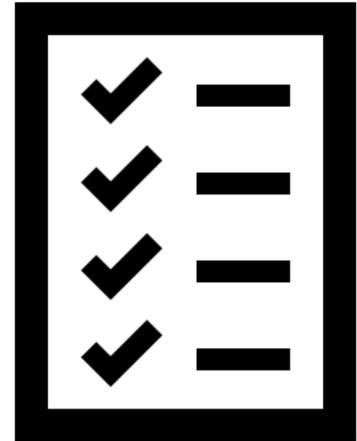
- What are fair housing laws and the history of fair housing?
- What is the duty to affirmatively further fair housing?



Introduction  
COURSE  
OBJECTIVES:  
SLIDE 2 OF 2

The workshop will address the following questions or topics (cont'd):

- Overview of fair housing laws:
  1. Federal law
  2. Massachusetts law
  3. Local regulations and initiatives
- How municipalities and local boards can avoid housing discrimination





# Overview of Fair Housing

# Introduction

## OVERVIEW:

### SLIDE 1 OF 6

## What is Fair Housing?

- Fair housing is the right to choose housing free from unlawful discrimination.
- Together, the federal Fair Housing Act (1968) and Massachusetts laws protect people from discrimination in housing based on race, color, religion, sex, national origin, familial status, disability, marital status, age, sexual orientation, gender identity, and other factors.
- The Fair Housing makes illegal any discrimination in the sale, lease or rental of housing, or making housing otherwise unavailable, because of race, color, religion, sex, handicap, familial status, or national origin.

Introduction  
OVERVIEW:  
SLIDE 2 OF 6

What are fair housing laws?

- Three broad categories:
  - (1) Court decisions based on state and federal constitution
  - (2) Statutes
  - (3) Regulations
- All fair housing laws have the same purpose: to prevent discrimination in the rental or sale of housing.



# Introduction OVERVIEW: SLIDE 3 OF 6

“It holds that municipalities can by zoning regulations see that the right sort of buildings are put in the right places and the wrong sort excluded from inappropriate places... It will be seen from the foregoing that the National Conference on City Planning was not only an observer, but took a helpful part in the shaping of the entire growth of zoning from its inception...to the final overwhelming victory...”

## ZONING UPHeld BY THE UNITED STATES SUPREME COURT

The decision of the United States Supreme Court in the Euclid Village (Ohio) case just handed down is the most overwhelming victory for building zoning that has ever been won in this country. The court upholds the constitutionality of excluding stores from residence districts, factories from business districts and apartment houses from detached home districts. Comprehensive zoning for height, bulk and use of buildings is supported emphatically all along the line. It holds that municipalities can by zoning regulations see that the right sort of buildings are put in appropriate places and the wrong sort excluded from inappropriate places. The decision is the culmination of ten years of court consideration of this subject.

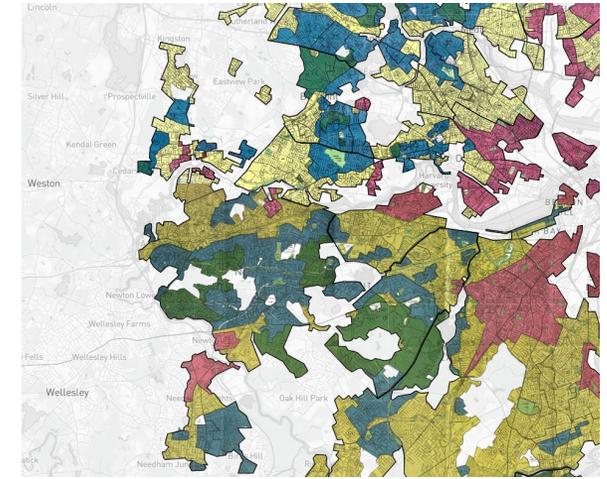
was advancing and popularizing this subject which by 1917 gradually acquired the name of zoning. During several succeeding years and before zoning had spread to many other cities the National Conference on City Planning worked on a formulation of a statement of principles of zoning. Although these "principles" were never adopted probably because of the rapid progress of the science and different needs of different parts of the country, they were widely distributed and undoubtedly had considerable effect in fixing the principles of sound zoning. When the Euclid Village case arose in the Federal Court in Ohio the Ohio State Conference on City Planning requested Alfred Bettman, of Cincinnati, to represent it before the court as amicus curiae. Mr Bettman also generously consented to represent as amicus curiae the National Conference on City Planning. He filed carefully prepared briefs both in the lower court and in the United States Supreme Court.

It will be seen from the foregoing that the National Conference on City Planning was not only an observer, but took a helpful part in the shaping of the entire growth of zoning from its inception in Chicago in 1912 until the final overwhelming victory attained by the Euclid Village decision in the highest court of the nation.

Introduction  
OVERVIEW:  
SLIDE 4 OF 6

Exclusionary planning and zoning was largely aided by federal dollars.

The Home Owners Loan Corporation maps were the federal government's answer to how to assess risky versus preferred investments largely based on race and geography: redlining.



Home Owners' Loan Corporation  
map of Greater Boston, 1938.  
National Archives and Records Administration,  
Mapping Inequality

Introduction  
OVERVIEW:  
SLIDE 5 OF 6

**THE NEW DEAL  
1934**

- Federal Housing Administration (FHA)
- Redlining
- Public housing developed

**THE GI BILL  
1944**

Beginning of Veterans Administration  
Adopted FHA standards and racially restrictive covenants

**THE HOUSING ACT  
1954**

Urban Renewal  
“Slums” “blight” written into law and still characterized as such today

**THE FEDERAL  
HIGHWAY ACT/  
URBAN RENEWAL  
1954 & 1956**

Underwrote white flight, destroyed immigrant and Black neighborhoods, displacing people and businesses

Introduction  
OVERVIEW:  
SLIDE 6 OF 6

**THE CIVIL RIGHTS  
ACT  
1964**

Prohibited discrimination on the basis of race, color, religion, sex or national origin.  
Strengthened enforcement of voting rights and school desegregation.

**THE FAIR HOUSING  
ACT  
1968**

Prohibited discrimination in housing, designated protected classes, affirmatively furthering fair housing, tied to federal funding



# Federal, State and Local Fair Housing Laws

# Introduction

## OVERVIEW:

### SLIDE 1 OF 2

What kinds of discrimination do fair housing laws prevent?

- Some federal protections are very broad
- Massachusetts protects against more categories of discrimination than the federal government
- Local governments usually work closely with the Commonwealth to prevent discrimination

# Introduction

## OVERVIEW:

### SLIDE 2 OF 2

#### What do fair housing laws require of public officials?

- Avoid discrimination in municipal housing programs
- Avoid discrimination in the implementation of federal and state housing
- Avoid discrimination in land use regulation and practices
- Must affirmatively further fair housing

# Introduction

## OVERVIEW:

### SLIDE 1 OF 1

## Why were fair housing laws passed?

- Fair housing law began with challenges to the constitutionality of racial discrimination in housing
- Buchanan v. Warley (1917): Supreme Court made ordinances that enforced the denial of housing to minority groups in white-zoned areas unconstitutional and illegal
- Shelley v. Kraemer, 334 U.S. 1 (1948): enforcement of racially restrictive covenants is unconstitutional and illegal

# Relevant Cases and Municipal Lawsuits for Discrimination in Housing

OVERVIEW:

SLIDE 1 OF 3

## Why were fair housing laws passed (cont'd)?

- 1957: Massachusetts outlaws racial discrimination in housing
- Jones v. Mayer (1968): Supreme Court upheld federal law bar on all racial discrimination (private or public), in sale or rental of property.
- Village of Arlington Heights v. Metropolitan Housing Development Corp. (1977): Proof of a racially discriminatory intent is required in claim that race was a motivating factor in a land zoning decision.

# Relevant Cases and Municipal Lawsuits for Discrimination in Housing

OVERVIEW:

SLIDE 2 OF 3

## Why were fair housing laws passed (cont'd)?

- Mount Laurel I (1975) and Mount Laurel II (1983): New Jersey Supreme Court said municipal land use regulations that prevent affordable housing opportunities for the poor are unconstitutional. Under the Mount Laurel Doctrine, New Jersey municipalities must plan, zone for, and take affirmative actions to provide realistic opportunities to provide their “fair share” of regional need for low and moderate-income housing.
- Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc. (2015): Claims of racial discrimination in housing cases should not be limited by questions of intent. The Court upheld the application of disparate impact under the Fair Housing Act.
- Bank of America v. City of Miami (2017): Cities can sue banks over Fair Housing Act violations if they target minorities.

# Relevant Cases and Municipal Lawsuits for Discrimination in Housing

GENERALLY

SLIDE 3 OF 3

- Discrimination in lending by banks led to high-interest loans given to people with good credit
- City of Miami filed suit to recover the taxes it would have received if the houses weren't in foreclosure
- U.S. Supreme Court said the case could proceed under the Fair Housing Act if the city showed how it was harmed by the bank's actions

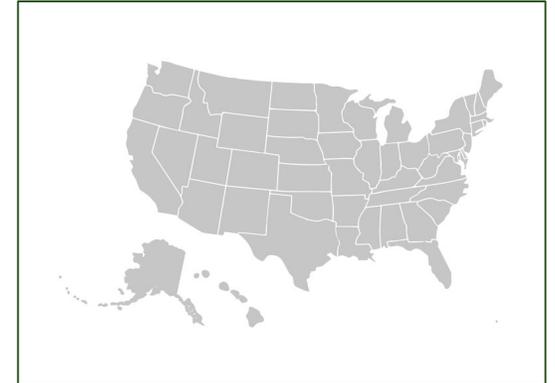
*Bank of America Corp. v. City of Miami, Fla., 137 S. Ct. 1296 (2017)*

# Federal Fair Housing Laws

## GENERALLY

Federal fair housing law categories include:

- Direct prohibitions of housing discrimination under the 14<sup>th</sup> Amendment (Fair Housing Act of 1968)
- Prohibiting discrimination in any program that receives federal funds
- Requiring action to remedy past discrimination in programs that receive certain federal funds



*Congress can act under Equal Protection Clause (14<sup>th</sup> Amendment) and Commerce Clause*

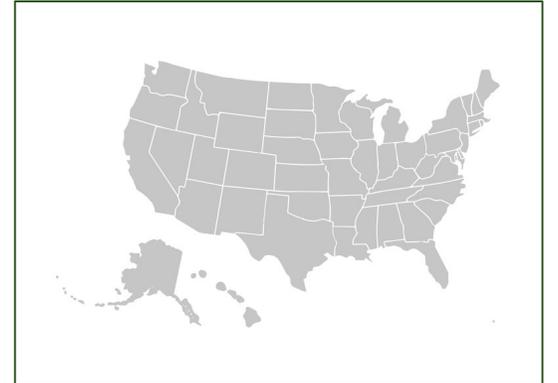
# Federal Fair Housing Laws

PROHIBITING  
DISCRIMINATION:

SLIDE 1 OF 3

## Fair Housing Act of 1968

- Prevents discrimination based on:
  1. Race
  2. Color
  3. National origin
  4. Religion
  5. Sex
  6. Familial status
  7. Disability



*Equal Protection Clause*

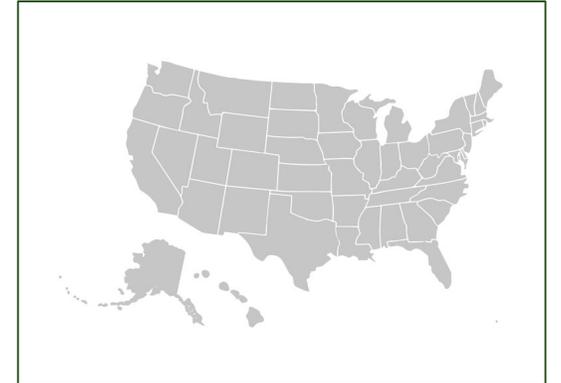
# Federal Fair Housing Laws

## PROHIBITING DISCRIMINATION:

SLIDE 2 OF 3

### Americans with Disabilities Act (1990)

- Title II prevents discrimination based on disability in programs and activities provided or made available by public entities (42 U.S.C. §§ 12131 – 12165)
- Title III prohibits discrimination based on disability for entities operating housing and community development programs (42 U.S.C. § 12181 – 12189)



*Equal Protection Clause*

Federal Fair  
Housing Laws  
PROHIBITING  
DISCRIMINATION:  
SLIDE 3 OF 3

Violence Against Women Act

- Extension on Congressional Calendar this year
- If extended, requires establishment of emergency transfer plans for facilitating the relocation of certain tenants who are victims of domestic violence, dating violence, sexual assault or stalking (42 U.S.C. § 14043e-11)



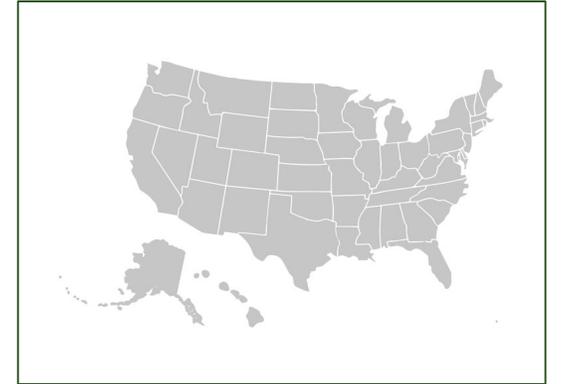
*Equal Protection Clause*

# Federal Fair Housing Laws

## ANY FEDERAL FUNDS

Federal funding recipients may not discriminate based on:

1. Race (42 U.S.C. § 2000d-1)
2. Color (42 U.S.C. § 2000d-1)
3. National origin (42 U.S.C. § 2000d-1)
4. Disability (29 U.S.C. § 794)
5. Age (42 U.S.C. §§ 6101 – 6107)



*Commerce Clause*

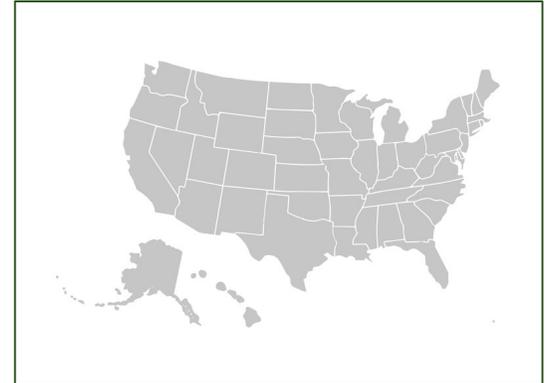
# Federal Fair Housing Laws

## CERTAIN FEDERAL FUNDS

SLIDE 1 OF 5

Community Development Act  
fund recipients cannot  
discriminate based on:

1. Race
  2. Color
  3. National origin
  4. Sex
  5. Religion
- Includes Community  
Development Block Grant  
funds (42 U.S.C. § 5309)



*Unenumerated Powers*

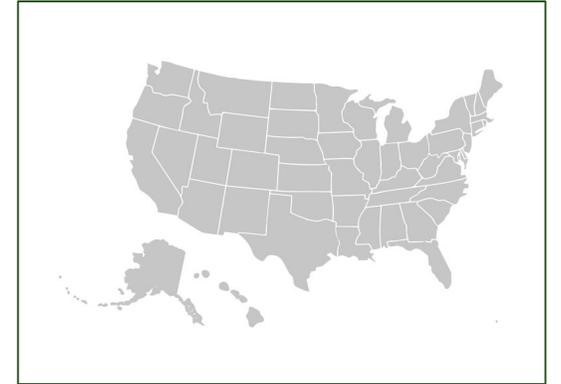
# Federal Fair Housing Laws

## CERTAIN FEDERAL FUNDS

SLIDE 2 OF 5

Education Fund recipients cannot discriminate based on sex

- Includes dormitories and other housing affiliated with an educational institution (20 U.S.C. §§ 1681-83, 1685-88)

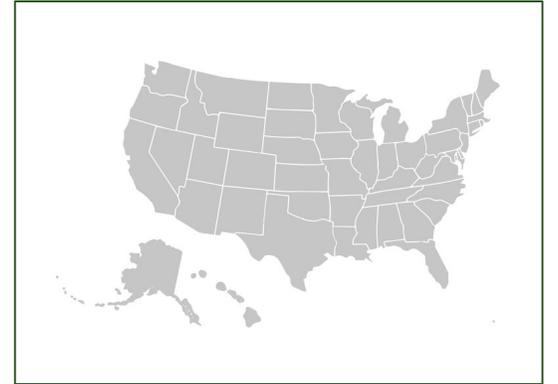


*Unenumerated Powers*

Federal Fair  
Housing Laws  
CERTAIN FEDERAL  
FUNDS  
SLIDE 3 OF 5

Certain buildings constructed with federal funds must not discriminate based on disability

- Many grants or loans from the U.S. government require any building constructed to be accessible to those with disabilities (42 U.S.C. § 4151 et seq.)



*Unenumerated Powers*

# Federal Fair Housing Laws

## CERTAIN FEDERAL FUNDS

SLIDE 4 OF 5

Housing and Urban Development (HUD) funding recipients must correct historical discrimination:

- Any fund recipient must take meaningful actions “to overcome the legacy of segregation, unequal treatment, and historic lack of access to opportunity in housing”



*Unenumerated Powers*

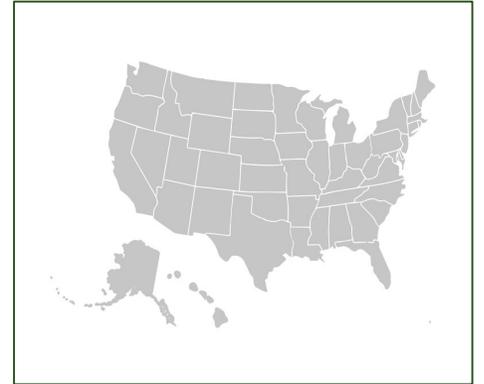
# Federal Fair Housing Laws

## CERTAIN FEDERAL FUNDS

### SLIDE 5 OF 5

HUD funding recipients must correct historical discrimination (cont'd):

- HUD and its grantees, as well as all executive agencies and departments of the federal government and any recipient of housing and urban development program or activity funds must comply with HUD's 2021 Interim Final Rule to AFFH.
- Municipalities that are responsible for reporting will need to certify that they AFFH in connection with local required plans.
- Resources are available to municipalities that want assistance with Assessments of Fair Housing, Analyses of Impediments to Fair Housing Choice, or other forms of fair housing planning



*Unenumerated Powers*

Questions?



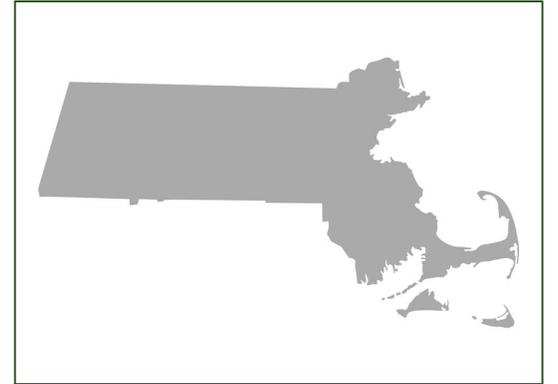
# Massachusetts Fair Housing Laws

## STATE CONSTITUTIONAL PROTECTIONS

Article 106 to the  
Massachusetts Constitution  
states:

“Equality under the law shall  
not be denied or abridged  
because of :

1. Sex
2. Race
3. Color
4. Creed
5. National origin”



*Massachusetts has an  
Equal Protection  
Amendment*

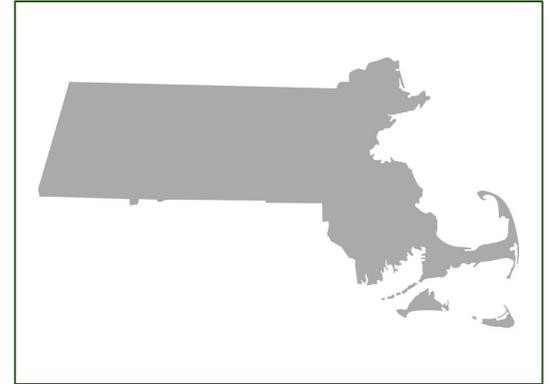
# Massachusetts Fair Housing Laws

LAWS OF THE  
COMMONWEALTH

SLIDE 1 OF 5

Categories of Massachusetts fair housing laws include:

- Housing discrimination is not allowed (M.G.L. c. 151B, § 4)
- Discrimination in public accommodations is not allowed (M.G.L. c. 272, §§ 92A, 98, 98A)
- Discrimination based on disability through zoning is not allowed (M.G.L. c. 40A, § 3)



*Massachusetts has  
broader authority than  
Congress*

# Massachusetts Fair Housing Laws

LAWS OF THE  
COMMONWEALTH

SLIDE 2 OF 5

It is unlawful to discriminate  
based on:

1. Race
2. Religion
3. Color
4. National Origin
5. Sex
6. Gender Identity
7. Sexual Orientation
8. Age



*See G.L. c. 151B, § 4*

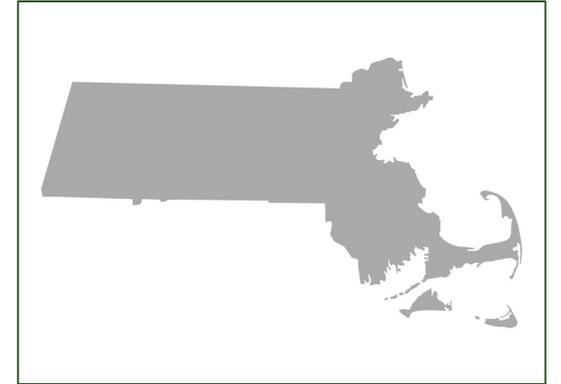
# Massachusetts Fair Housing Laws

LAWS OF THE  
COMMONWEALTH

SLIDE 3 OF 5

It is unlawful to discriminate  
based on (cont'd):

9. Genetic Information
10. Ancestry
11. Marital Status
12. Veteran or Active  
Military Status
13. Disability
14. Familial Status (having  
children)
15. Source of Income  
(housing assistance)



*See G.L. c. 151B, § 4*

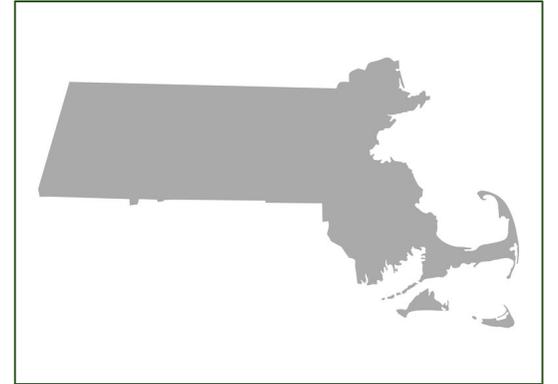
# Massachusetts Fair Housing Laws

LAWS OF THE  
COMMONWEALTH

SLIDE 4 OF 5

Regulation and enforcement of fair housing laws includes:

- Massachusetts Commission Against Discrimination (“MCAD”) is the agency in charge of investigating discrimination
- MCAD creates regulations (804 CMR 2)
- The Massachusetts Attorney General's Civil Rights Division prosecutes litigation



*Massachusetts  
investigates reports of  
housing discrimination*

# Massachusetts Chapter 40B

## LAWS OF THE COMMONWEALTH

### SLIDE 4 OF 5

- The Commonwealth's regional planning law (1964)
- In 1969, the legislature added Sections 20-23 to address regional housing disparities
- Law assumes communities have met their regional "fair share" if at least 10% of their housing stock is included in the Subsidized Housing Inventory (SHI), affordable to low-income people, and subsidized by a federal or state program
- Upheld in Board of Appeals of Hanover vs. Housing Appeals Committee (1972-1973)
- Upheld following failed statewide ballot initiative to repeal the law in 2010.

# Local Fair Housing Ordinances and Bylaws

## HUMAN RIGHTS COMMISSIONS

SLIDE 1 OF 3

Human rights commissions can investigate housing discrimination:

- Many municipalities have created local human rights commissions that receive reports of housing discrimination and notify MCAD
- Most of these commissions do not have the independent power to assess fines for discrimination

*Massachusetts municipalities can also investigate reports of housing discrimination themselves*

# Local Fair Housing Ordinances and Bylaws

## HUMAN RIGHTS COMMISSIONS

### SLIDE 2 OF 3

Powers of human rights commissions include:

- They may “assure compliance with existing state law”
- They may hold investigative hearings
- They may ask a court for the authority to subpoena witnesses
- Commissions should report findings to MCAD or to the Attorney General’s Office

*Bloom v. City of  
Worcester, 363 Mass.  
136 (1973)*

# Local Fair Housing Ordinances and Bylaws

## HUMAN RIGHTS COMMISSIONS

SLIDE 3 OF 3

### Boston and Cambridge Human Rights Commissions

- Cambridge Human Rights Commission can investigate, subpoena witnesses and make ultimate determinations if probable cause exists; reports to the Attorney General's Office
- Boston Human Rights Commission can impose civil penalties and go to court on its own to stop discrimination

*The Massachusetts  
Legislature can give a  
local board specific  
powers*



# Municipal Responsibility to Avoid Discrimination

Municipal  
Responsibility  
to Avoid  
Discrimination  
**INTENTIONAL  
DISCRIMINATION**

- Remind those in a public meeting discussing a housing policy or regulatory change that it is unlawful to discuss “keeping out” people with a(n):
  1. Disability (e.g. recovering addicts)
  2. Child (due to impacts on schools)
  3. Income limitation (e.g. who require housing assistance)



*Intentional  
discrimination can  
violate federal law,  
Massachusetts law or  
both*

Municipal  
Responsibility  
to Avoid  
Discrimination  
**DISCRIMINATORY  
IMPACT:**

**SLIDE 1 OF 2**

- If the result of a policy is discrimination against a protected group of individuals, then a case can be brought under the federal Fair Housing Act
- The policy or policies must cause the disparate impact



*Texas Dep't of Hous. &  
Cmty. Affairs v.  
Inclusive Communities  
Project, Inc.*, 135 S. Ct.  
2507 (2015)

Municipal  
Responsibility  
to Avoid  
Discrimination  
DISCRIMINATORY  
IMPACT:

SLIDE 2 OF 2

- A violation of Massachusetts law will also be found where a policy results in discrimination against a protected group of individuals
- Again, the policy or policies must cause the disparate impact



*Burbank Apartments  
Tenant Ass'n v.  
Kargman, 474 Mass.  
107 (2016)*

# Municipal Responsibility to Avoid Discrimination

## DISCRIMINATION AND AFFORDABLE HOUSING

SLIDE 1 OF 4

Tip 1: Avoid discrimination In providing affordable housing information

- Affordable housing programs are overseen by the EOHLC
- Municipalities can have their own affordable housing programs
- Information must be accessible to those with disabilities or those with limited English proficiency



*Staff should be trained  
so they can help  
everyone access  
affordable housing  
information*

# Municipal Responsibility to Avoid Discrimination

## DISCRIMINATION AND AFFORDABLE HOUSING

SLIDE 2 OF 4

Tip 2: Caution the public in discussions about affordable housing to avoid discrimination

- G.L. c. 40B, §§ 20-23, can allow the construction of high(er)-density housing
- Proposals may be contentious, but discussions that are discriminatory in nature cannot occur
- Permit condition(s) also cannot be discriminatory



*If a member of the public encourages discrimination against a protected group, the board must reject that as a basis for action*

# Municipal Responsibility to Avoid Discrimination

## DISCRIMINATION AND AFFORDABLE HOUSING

SLIDE 3 OF 4

Tip 3: Housing authorities should exercise caution

- Any municipality can create a housing authority
- Housing authorities cannot discriminate against applicants or tenants
- Some housing authority property may be a “public forum,” such that assembly and speech are protected



*Housing authorities that receive federal funding are usually subject to federal discrimination laws*

Municipal  
Responsibility  
to Avoid  
Discrimination  
DISCRIMINATION  
AND AFFORDABLE  
HOUSING

SLIDE 4 OF 4

Tip 4: Zoning regulations can be unlawful if there is a discriminatory impact

- Zoning regulations that prevent families with children or low-income residents can be unlawful
- Municipalities have attempted to limit the use of property for drug addiction rehabilitation, but recovering addicts have a protected disability

*G.L. c. 40A, § 3 specifically prohibits disability discrimination*

*G.L. c. 40A, § 3A specifically prohibits family discrimination and preference for seniors*



# Avoiding Discrimination Through Land Use Controls

# Avoiding Discrimination Through Land- Use Controls

CASE STUDY:

SLIDE 1 OF 4

After Hurricane Katrina, a parish outside of New Orleans passed a law limiting rentals to family members unless a permit was obtained; and passed a moratorium on multi-family housing

*Greater New Orleans  
Fair Housing Action Ctr.  
v. St. Bernard Par., 641  
F. Supp. 2d 563 (E.D. La.  
2009)*

# Avoiding Discrimination Through Land- Use Controls

CASE STUDY:

SLIDE 2 OF 4

The federal court, analyzing the moratorium and law, found that the terms “ghetto,” “crime,” “blight” and “shared values” were used to describe why people wanted to pass the laws; it determined that these justifications were like references to “new” people and “undesirables” that had previously been found by courts to be camouflaged racial expressions

*Greater New Orleans  
Fair Housing Action Ctr.  
v. St. Bernard Par., 641  
F. Supp. 2d 563 (E.D. La.  
2009)*

# Avoiding Discrimination Through Land- Use Controls

CASE STUDY:

SLIDE 3 OF 4

The court determined, based on the impact to the protected group, and the discussion about fears related to who might move into the community, that the moratorium and law were unlawful; and invalidated them

*Greater New Orleans  
Fair Housing Action Ctr.  
v. St. Bernard Par., 641  
F. Supp. 2d 563 (E.D. La.  
2009)*

# Avoiding Discrimination Through Land- Use Controls

SLIDE 4 OF 4

Other relevant cases for reference:

- Zoning Board of Appeals versus Housing Appeals Committee, 2010 – 40B conditions and preferences
- Southern Middlesex Opportunities Council versus Town of Framingham, 2020 – permitting delays and Dover uses
- Avenue 6E Investments versus Yuma, CA, 2016 – rezoning for higher density



# Affirmatively Furthering Fair Housing

SLIDE 1 OF 1

Taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.

- Address housing needs
- Replace segregated living patterns with integrated and balanced living patterns
- Ensure access to opportunity

*AFFH definitions can be found in the Interim Final Rule in § 5.151 of the rule.*

# Summary

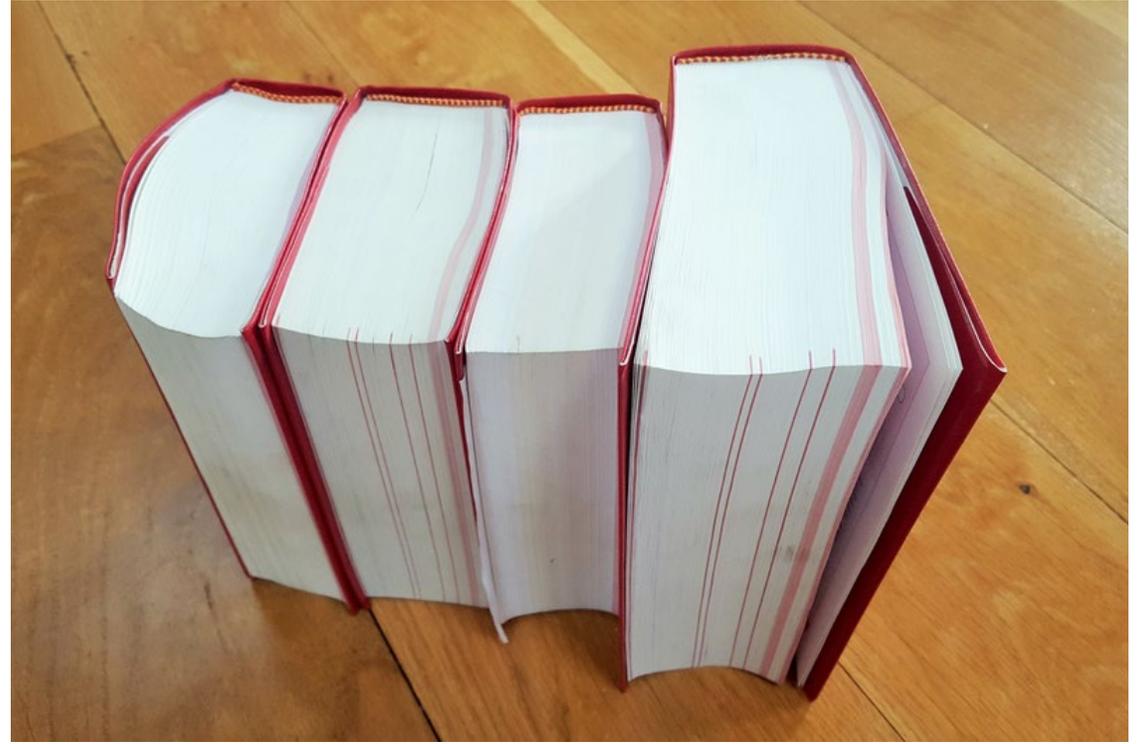
- Massachusetts and federal laws prohibit discrimination
- Municipalities can establish local commissions to investigate and report discrimination
- Municipalities that receive HUD funds are obligated to further the purposes of the federal Fair Housing Act



## Summary

- Municipalities must avoid discrimination when creating housing policy, implementing housing programs or creating housing opportunities
- Land use regulation cannot be intentionally discriminatory, or have a discriminatory impact
- Municipalities must take meaningful actions to affirmatively further fair housing





# Conclusion

## Conclusion

### ADDITIONAL INFORMATION

For more information, please refer to the Workshop Supplement entitled “Topic: Fair Housing Laws,” updated through September 2023.

Kindly reference the above Workshop Supplement for a complete bibliography of all statutes, cases and works cited or quoted in the foregoing presentation.

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Questions?



## Additional Resources

### FURTHER SUPPORT

#### **Citizen Planner Training Collaborative**

[www.masscptc.org](http://www.masscptc.org)

#### **Executive Office of Housing and Livable Communities**

<https://www.mass.gov/orgs/executive-office-of-housing-and-livable-communities>

#### **Massachusetts Fair Housing Center**

<https://www.massfairhousing.org/>

#### **Fair Housing and Equal Opportunity**

[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp](https://www.hud.gov/program_offices/fair_housing_equal_opp)

#### **Fair Housing at 50 – American Planning Association**

<https://www.planning.org/planning/2018/apr/fairhousing/>

#### **Planning for Equity Policy Guide**

<https://planning.org/publications/document/9178541/>

#### **Equity in Zoning Policy Guide**

<https://planning.org/publications/document/9264386/>

#### **Ending Zoning's Racist Legacy**

<https://www.planning.org/publications/document/9227445/>



[www.masscptc.org](http://www.masscptc.org)

Thank you!