Citizen Planner Training Collaborative (CPTC)
Workshop Supplement
Updated through September 2023

TOPIC: FAIR HOUSING LAWS

A. Introduction

There are both state and federal fair housing laws that operate to prevent discrimination against any current or prospective tenant or any prospective home buyer. Massachusetts prevents discrimination on more bases than federal law does. Federal law provides most of the framework for preventing discrimination based on disability. In Massachusetts, discrimination is unlawful on the basis of: race, color, national origin, religion, disability, sex, sexual orientation, gender identity, familial status (usually having or being a child), age, marital status, source of income (usually a federal or state subsidy), veteran or active military status and genetic information.

1. Why were fair housing laws passed?

Fair housing, generally speaking, began not with any legislature but with court decisions that prevented particular kinds of discrimination based on race or color.[1] For many years this pattern continued with more and more forms of discrimination struck down by the courts.[2] Both federal and state legislatures began passing fair housing legislation in the mid-twentieth century.[3] Some states provide broader protections against discrimination than what is found at the federal level; Massachusetts, in recent decades, has been a leader in this effort.[4] Despite the passage of these laws, statistics demonstrate that housing segregation by race, color and source of income is an ongoing problem, especially in the greater Boston Metro area.[5] Additionally, discrimination that is not historically based segregation of a group, but instead making it more difficult for that group to live anywhere, such as sex, familial status, disability and national origin, continues to create problems for tenants and prospective homebuyers.[6]

B. Federal, State and Local Fair Housing Laws

Fair housing laws regulate not only the private transactions of renting, leasing and buying real estate, but also relate to state and municipal housing programs, implementation of nearly all state and federal programs and municipal regulations of land use. Many municipalities in Massachusetts have elected to create human rights commissions that work with local residents to prevent discrimination and report

discrimination to the Commonwealth when appropriate. Massachusetts and municipalities that receive certain federal funds have an obligation to report how they are furthering fair housing goals. Massachusetts municipalities also have a duty to implement any federal or state programs related to housing in a way that does not result in discrimination, and a duty to regulate land use in a way that is not discriminatory.

1. Federal fair housing laws

At the federal level, the Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601-19), is the primary law focused directly on preventing discrimination in the rental and sale of housing. In certain circumstances, a violation of the Fair Housing Act can also be deemed a violation of a person's rights under the U.S. Constitution. See Hills v. Gautreaux, 425 U.S. 284 (1976) (determining that the U.S. Department of Housing and Urban Development had violated the Fifth Amendment by creating segregated housing developments). The Fair Housing Act prevents discrimination based on: race, color, national origin, religion, sex, familial status or disability.

Certain federal laws prohibit discrimination for specific groups of people in *any* program receiving federal funding, including:

(i) Race, color and national origin. (42 U.S.C. § 2000d-1)

(ii) Disability. (29 U.S.C. § 794)

(iii) Age. (42 U.S.C. §§ 6101-6107)

Other federal laws prohibit discrimination against certain groups if an entity receives a particular type of federal funding:

(i) Any program receiving funds under the Community Development Act cannot discriminate based on: race, color, national origin, sex or religion. This includes Community Development Block Grant money. (42 U.S.C. § 5309)

(ii) Any educational program that receives federal funds cannot discriminate on the basis of sex. This includes dormitories and other housing affiliated with an educational institution. (20 U.S.C. §§ 1681-83, 1685-88)

(iii) Certain structures designed, constructed, altered or leased with

federal funds are required to be accessible to and useable by persons with disabilities. (42 U.S.C. § 4151, *et seq.*)

Certain federal laws require local housing programs to be administered without discrimination or provide accommodations for groups of people.

(i) Title II of the Americans with Disabilities Act of 1990 ("ADA") prohibits discrimination based on disability in programs and activities provided or made available by public entities. (42 U.S.C. §§ 12131-12165)

(ii) Title III of the ADA prohibits discrimination based on disability for entities operating housing and community development programs. (42 U.S.C. § 12181-2189)

(iii) The Violence Against Women Act requires the establishment of emergency transfer plans for facilitating the emergency relocation of certain tenants who are victims of domestic violence, dating violence, sexual assault or stalking. (42 U.S.C. § 14043e-11)

Additionally, any recipient of funds from the U.S. Department of Housing and Urban Development ("HUD") has an affirmative duty under the Fair Housing Act to take meaningful actions "to overcome the legacy of segregation, unequal treatment and historic lack of access to opportunity in housing." Federal Register Vol. 80, p. 42272 (July 16, 2015). This duty was part of the original Fair Housing Act, and was more completely defined in 2015 with the passage of the so-called Affirmatively Furthering Fair Housing ("AFFH") Rule by HUD. The AFFH Rule established a new way of reporting for HUD recipients that requires significant input from the community called an Assessment of Fair Housing ("AFH"). The municipalities that are responsible for reporting will need to begin submitting their AFH on or after October 2020. In the meantime, Massachusetts is carrying out an updated Analysis of Impediments to Fair Housing, which is the previous means of reporting on AFFH compliance. Any municipality that receives HUD funds has an affirmative duty to further the purposes the Fair Housing Act.

2. Massachusetts fair housing laws

The primary statute in Massachusetts that prevents discrimination is G.L. c. 151B. Specifically, G.L. c. 151B, § 4, includes a provision that makes housing discrimination unlawful. Other Massachusetts statutes, G.L. c. 272, §§ 92A, 98 and 98A, relate to discrimination in public accommodation. G.L. c. 40A, § 3, also specifically disallows

discrimination against anyone with a disability through local zoning regulations. Finally, Article 106 to the Massachusetts Constitution states that "[e]quality under the law shall not be denied or abridged because of sex, race, color, creed or national origin."

The Massachusetts Commission Against Discrimination ("MCAD") is the primary agency in charge of investigating discrimination in Massachusetts; it has regulations related to housing that can be found at 804 CMR 2.00, *et seq.* The Civil Rights Division of the Attorney General's Office prosecutes cases involving unlawful discrimination.

3. Local fair housing ordinances and bylaws

Many municipalities across Massachusetts have created commissions or boards that work to address human rights violations. Typically, these "human rights commissions" have no formal statutory authority. There are two notable exceptions to this rule: both Cambridge and Boston have ordinances that allow them to enforce fair housing rules independently. For the other municipalities in the Commonwealth, the human rights commissions can have some power so long as they do not preempt the actions of the MCAD. The case Bloom v. City of Worcester, 363 Mass. 136 (1973), challenged the validity of an ordinance creating a Human Rights Commission and sets out exactly what powers these commissions do and do not have.

The Supreme Judicial Court in Bloom decided that the city properly adopted the ordinance because no new rights or duties were created; instead the commission's task was to assure compliance with existing state law and, in particular, G.L. c. 151B. The Court then looked at the activity of the human rights commission to determine if it was inconsistent with state law and described what the commission could and could not do as follows:

> To the extent that the commission exercises powers and functions beyond the range of the statutory authority of any local agency which might be appointed by the MCAD, the commission's activities will not be inconsistent with G.L. c. 151B if the legislative purpose of G.L. c. 151B can nevertheless be achieved.

Id. at 159. While this rule requires an awareness of what these local commissions might do, the Court noted that MCAD had itself stated that local human rights commissions were not an impediment to its goals and mission. Should a municipality wish to create a human rights commission, it is a good idea to model the commission on an existing body and also check with MCAD to assure that the commission's activities are not in conflict with MCAD's work.

A major issue in the Bloom case was the ability of the Worcester human rights commission to subpoena witnesses. This issue provides a good example of the maximum reach of such a commission. The Court decided that the power to issue a subpoena was proper because it was structured in the following way:

> Any person summoned by the commission may assert the same rights that a person may assert in response to any subpoena. If a person who has been summoned refuses to testify, the commission has no inherent power of enforcement… but it may seek a court order under G.L. c. 233, § 10. At a hearing on such an order, the defendant may assert a variety of arguments designed to persuade the court that as matter of law or in its discretion no order should be issued. For example, a defendant may challenge the jurisdiction of the commission in the particular circumstances of his case. Additionally, the defendant may argue that his substantive rights in some pending or threatened litigation or agency hearing will be unfairly interfered with by requiring his attendance and his testimony. In any event, whether to issue an order compelling a witness to appear and testify is discretionary with the judge.

Id. at 160-61.

So, while a local human rights commission can be created to help in the enforcement of fair housing laws, the powers are relatively limited in scope. A municipal human rights commission can receive reports of discrimination, but, unlike conservation commissions, for example, the commission cannot make rules that expand the state law regarding discrimination. A human rights commission can hold investigative hearings, and even subpoena witnesses, to determine whether or not discrimination is occurring, but has no ability to issue a fine or other penalty for failure to appear. The only power the commission has is to go to court and ask a judge to make the witness appear. A human rights commission, upon completing its investigation, would simply submit its findings to MCAD or to the Attorney General who then could enforce the law.

The exception to this rule is if a Special Act of the Legislature is passed that gives a municipality independent authority to take action, such as the acts relating to Cambridge and Boston. Cambridge, under Chapter 413 of the Acts of 1991, has the authority to investigate, subpoena witnesses and make ultimate determinations of whether or not probable cause of discrimination exists; if so, the Cambridge human rights commission requests enforcement from the Massachusetts Attorney General's Office. Boston, similarly, has a human rights commission with broad powers. Under Chapter 37

of the Acts of 1994, this includes the power to impose civil penalties and go to court on its own to try to stop discrimination.

4. Municipal lawsuits for discrimination in housing

While, generally speaking, the state and federal government are tasked with penalizing discrimination, there is one recent case that potentially allows municipalities to bring suit for violations of the federal Fair Housing Act. See Bank of America Corp. v. City of Miami, 137 S. Ct. 1296 (2017). The U.S. Supreme Court in that case found that the City of Miami had standing to sue banks that had engaged in racial discrimination in issuing loans. The City claimed that high-interest loans were disproportionately given to African-American and Latino bank customers who should have been eligible for better loans. The case was appealed on the grounds that the City of Miami did not have standing under the federal Fair Housing Act, and also had not properly tied any losses in municipal revenue to the bank's lending practices.

The Court decided that the City did have standing to bring suit under the Fair Housing Act citing to the City's "economic injuries that arguably fall within the FHA's zone of interests, as we have previously interpreted that statute." Id. at 1305. The Supreme Court then determined that the City had not adequately demonstrated that the bad loans were directly tied to a loss of tax revenue, and sent the case back to the lower courts to determine what to do next. Should municipalities in Massachusetts believe that they have suffered financial losses due to racial discrimination in housing, it is possible that a case could be brought to seek damages for those losses.

C. Municipal Responsibility to Avoid Discrimination in Housing Programs

1. Intentional discrimination

It almost goes without saying that intentional discrimination in carrying out housing programs is not allowed under state or federal law. One of the main ways that policies that are intentionally discriminatory can be carried out is if policy makers, or members of the general public participating in policy making, rely on unfounded fears about any group of people. As a public servant, you have a responsibility to be sure that discussions about policies related to housing do not devolve into a discussion about particular groups of people and the "effects" they might have on a municipality. Discussions about "keeping out" recovering addicts, people on public assistance or people with children should be cut short; all of these groups are specifically protected under Massachusetts law. If intentional discrimination can be shown, it would be a violation not only of state and federal law, but also of the U.S. Constitution.[7] If a constitutional

violation is shown, a court has wide latitude to impose any remedy.[8]

2. Discriminatory impact

It is not enough, however, to avoid intentional discrimination. A U.S. Supreme Court case determined that a public entity can be held liable under the Fair Housing Act if the *result* of a policy is discrimination against a protected group of individuals. See Texas Dep't of Housing & Community Affairs v. Inclusive Communities Project, Inc., 135 S. Ct. 2507 (2015). The Court in making this determination was extending what is called "disparate-impact" liability. The rule is that the law "covers the discriminatory effect of a practice as well as the motivation behind the practice." Id. at 2516. So, if the result of a municipality's action is that protected groups are denied fair housing opportunities, the municipality could be liable.

However, "a disparate-impact claim that relies on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing that disparity." Id. at 2523. In that same Supreme Court case, a non-profit group had relied on statistics showing that affordable housing under a federal program was disproportionately being built in already poor areas. The Supreme Court decided that statistics weren't enough; the group not only had to show that the policy was causing this result, it also had to show that a different policy would achieve a better result.

Disparate impact claims can also be brought under Massachusetts law. The Supreme Judicial Court in 2016 largely adopted the Supreme Court's test regarding a disparate impact which requires a plaintiff to show that the practice or policy will have a discriminatory effect.[9] The Court stated that "plaintiffs must meet a robust causality requirement… by point[ing] to a defendant's policy or policies causing that [statistical] disparity."[10] The Court then stated that "[a] practice or policy is contrary to the disparate-impact requirement [if it creates] artificial, arbitrary and unnecessary barriers that create discriminatory effects or perpetuate segregation."[11] While the Massachusetts and federal cases largely use the same test for showing a discriminatory impact, as stated above, more groups of people are protected in Massachusetts.

3. Discrimination and affordable housing

Most of the affordable housing programs in Massachusetts are overseen by the Executive Office of Housing and Livable Communities (EOHLC) at the state level and HUD at the federal level. For example, EOHLC has the ongoing role of assuring that an affordable unit remains rented and/or sold to those who meet the eligibility requirements for affordable housing. Another entity that plays a large role in affordable housing

creation in Massachusetts is the Massachusetts Housing Finance Agency, also known as MassHousing. Any affordable project overseen by HUD, or by EOHLC, or financed by MassHousing, will have numerous rules regarding the planning, design, construction and operation that are intended to avoid discrimination. One of the main ways that discrimination arises is through a failure to provide information in in a way that accommodates those with disabilities or those who do not speak English as a primary language. While adhering to the requirements of any state or federal program will include taking many steps to avoid discrimination, staff members involved with housing should also be trained to avoid discrimination in their day-to-day jobs.

At the local level, new affordable housing is created by private developers (usually under G.L. c. 40B or to meet inclusionary zoning requirements) or through public housing or redevelopment authorities pursuant to G.L. c. 121B, § 3.

a. Private affordable housing developments under G.L. c. 40B

G.L. c. 40B, §§ 20-23, very generally speaking, is a law that allows developers to circumvent certain local development regulations in municipalities with fewer than 10% of their total units recognized as affordable units by the Commonwealth. Municipal zoning boards of appeal are responsible for approval of so-called 40B projects; they sit on behalf of all local boards and can waive local requirements. See G.L. c 40B, § 21. The 40B process can be very contentious because the developments often do not adhere to longstanding local rules and regulations. It is important to assure that the basis for any 40B denial is not due to discrimination against a group protected by G.L. c. 151B, § 4. It is also important to be sure that any conditions imposed on a developer in the 40B process are not discriminatory in nature.

b. Housing authorities

Every municipality in Massachusetts can create or dissolve a housing authority given the needs of the community. Municipalities often have responsibilities regarding the resale of affordable units. Municipalities not only establish and dissolve housing authorities, but often support housing authorities financially or work closely with them, see G.L. c. 121B, §§ 19-21, and so it is in their interest to be aware of the liability housing authorities can face. Housing authorities can be held liable in tort (a claim of injury) or contract in their own right. See G.L. c. 121B, § 13.

Housing authorities are frequently subject to federal oversight arising from the use of federal funds, but generally must comply with state law. See Norfolk Electric, Inc. v. Fall River Housing Authority, 417 Mass. 207 (1994) (housing authority must comply with

state competitive bidding laws). This is especially so where a housing authority is acting as a landlord. "In the area of landlord-tenant law, unless there is an actual conflict between directives imposed by Federal and by State law, Federal law will not displace State law." Cruz Management Co. v. Wideman, 417 Mass. 771, 780 (1994). Housing authorities must comply with all notice requirements in evicting a tenant, generally can evict only for good cause and, importantly, must inform any tenant with a disability of his or her rights as a disabled tenant, which includes the possibility of a reasonable accommodation in lieu of eviction. See Boston Housing Authority v. Bridgewaters, 452 Mass. 833, 846 (2009).

Additionally, a housing authority must avoid unconstitutional rules. Housing authority property has some characteristics of qualifying as public property. For example, in Walker v. Georgetown Housing Authority, 424 Mass. 671 (1997), a housing authority was found to be a public forum and could not create a rule against political solicitation. On the other hand, the rights of tenants on housing authority property are generally no different from the rights of other tenants. In Commonwealth v. Nelson, 74 Mass. App. Ct. 629 (2009), a person was arrested and told not to return to a housing authority's property. The Court held that, where the person was visiting a tenant on the premises, the housing authority could not bring a charge of trespass against him.

c. Disabled persons

While protections for persons with disabilities are tied to federal and state funds for affordable housing, it is crucial that local communities also consider those with disabilities in carrying out any local housing programs. This not only includes reminding those who wish to construct affordable housing that it needs to be entirely accessible, but also making sure that those with disabilities (1) receive all notices in an accessible way, (2) can access the information they need about housing and (3) are intentionally included in any housing program process.

D. Avoiding Discrimination Through Land Use Controls

One way in which housing segregation and other forms of discrimination have been perpetuated is through the use of zoning controls. Cases challenging zoning regulations under the Fair Housing Act have usually turned to the disparate impact test. "Suits targeting unlawful zoning laws and other housing restrictions that unfairly exclude minorities from certain neighborhoods without sufficient justification are at the heartland of disparate-impact liability… Recognition of disparate-impact liability under the FHA plays an important role in uncovering discriminatory intent: it permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification

as disparate treatment." Texas Dep't of Housing & Community Affairs, 135 S. Ct. at 2511-12.

E. M.G.L. Chapter 40A Section 3 and Section 3A

The Dover Amendment, also known as Massachusetts General Law (MGL) Chapter 40A, Section 3, exempts religious and educational uses from certain zoning restrictions. The amendment was adopted in 1950 in response to local zoning bylaws that prohibited religious schools in residential neighborhoods.

The amendment mandates that proposed religious and educational land uses be given more favorable treatment than other proposed uses, such as residential, commercial, or industrial. The amendment protects only those uses of land that have a bona fide goal that can reasonably be described as educationally significant. In some instances, there is a residential component integrated into these uses, and must be allowed under this Section of the Zoning Act if they are a compliant use.

The Housing Choice Act established new obligations for the 177 designated MBTA communities in Massachusetts. MBTA communities — defined by reference to sections 1 and 6 of Chapter 161A or in accordance with any special law relative to the area constituting a transit authority — must have at least one district of reasonable size in which multi-family housing is permitted as of right; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children. A district of reasonable size shall: (i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by Section 40 of Chapter 131 and Title 5 of the State Environmental Code established pursuant to Section 13 of Chapter 21A; and (ii) be located not more than half a mile from a commuter rail station, subway station, ferry terminal or bus station, if applicable. Implementation of this requirement is underway and being overseen by the Executive Office of Housing and Livable Communities, which has issued compliance guidelines. Towns are advised to consult with the EOHLC and their regional planning agency on potential technical assistance options and best practices for implementing these requirements.

1. Case study: Zoning in post-Hurricane Katrina New Orleans

The most recent federal case of note to strike down a local zoning ordinance provides a good overview of how zoning ordinances are found to be in violation of the federal Fair Housing Act. See Greater New Orleans Fair Housing Action Center v. St. Bernard Parish, 641 F. Supp. 2d 563 (E.D. La. 2009). In that case, a parish outside of New Orleans passed a law limiting rentals to family members unless a permit was obtained and

also passed a moratorium on multi-family housing given the development pressures following Hurricane Katrina. The court found that "the racial composition for the entire New Orleans MSA was 57.4% Caucasian and 37.4% African-American," but "St. Bernard Parish… was 88.3% Caucasian and 7.6% African-American." Id. at 569.

The Court went through a discriminatory intent analysis and found that there was some evidence of discriminatory intent based on comments that the multifamily housing would lead to problems in the community:

> The references to 'ghetto,' 'crime,' 'blight' and 'shared values' are similar to the types of expressions that courts in similar situations have found to be nothing more than 'camouflaged racial expressions.' Smith v. Town of Clarkton, 682 F.2d 1055, 1066 (4th Cir. 1982) (affirming that statements about 'undesirables' and concerns about personal safety due to 'new' people are 'camouflaged racial expressions'); Atkins v. Robinson, 545 F.Supp. 852, 871-72 (E.D.Va. 1982) (finding statement that she 'feared the projects would degenerate to slum-like conditions, with an abundance of crime' to be a veiled reference to race).

Id. at 571. The Court then turned to the discriminatory effect analysis and noted that there are two general tests for discriminatory effect due to a zoning regulation. The first test created by the Seventh Circuit Court of Appeals (which includes Illinois) requires a court to consider:

> (1) how strong is the plaintiff's showing of discriminatory effect; (2) is there some evidence of discriminatory intent, though not enough to satisfy the constitutional standard… ; (3) what is the defendant's interest in taking the action complained of; and (4) does the plaintiff seek to compel the defendant to affirmatively provide housing… or merely to restrain the defendant from interfering with individual property owners who wish to provide such housing.

Metropolitan Housing Dev't Corp. v. Village of Arlington Heights, 558 F.2d 1283, 1290 (7th Cir. 1977). A second, simpler, test has been articulated by the First Circuit Court of Appeals (which includes Massachusetts) as follows:

> Another route to establishing a prima facie case of racial discrimination under the Fair Housing Act is to show that appellee's actions actually or predictably [result] in racial discrimination. The important distinction here is that we look only at the effect of the Board's actions, not its motivation.

Macone v. Town of Wakefield, 277 F.3d 1, 7 (1st Cir. 2002) (internal citations omitted).

The Court in Greater New Orleans Fair Housing Action Center decided to adhere to the more rigorous test. The Court looked at the evidence and found that the protected group would be significantly impacted by the moratorium and the so-called blood relative rule. The Court found that the discussion about fears related to who might move into the community were some evidence of discriminatory intent. The Court looked at six different non-discriminatory interests for the zoning ordinance and found that none of them were persuasive. Lastly, the Court determined that the person bringing the case simply wanted to develop his own property.

Under the more lenient test that analyzes whether or not the actions taken do in fact cause the disparate impact, the case would have been much simpler.

The takeaway from the case study is to be certain that a municipality does not pass a zoning regulation based on a desire to exclude a protected group. General concerns about the impact of growth are acceptable, but attempts to prevent any group or "kind" of people from moving into town are not. It is generally unacceptable, for example, to try to keep out families with small children because they might raise the costs of education. It is also not acceptable to pass a zoning regulation that is aimed at those with a disability such as past addiction to a controlled substance. These are examples of intentional discrimination. It is also unlawful to create a policy that has the effect of discriminating in any apparent way against these groups.

One exception to the rule is a land use control specifically deemed not discriminatory in nature: the construction of housing for persons 55 and older or 62 and older. See G.L. c. 151B, § 4. This is not age discrimination under either Massachusetts law or federal law. See Town of Northborough v. Collins, 38 Mass. App. Ct. 978, 978-79 (1995).

E. Conclusion

In summary, both state and federal law specifically prohibit discrimination in housing. Municipalities can take it upon themselves to establish local commissions that actively seek to investigate and report such discrimination. Municipalities that receive HUD funds have an obligation to take actions that further the purposes of the federal Fair Housing Act. Massachusetts law protects more groups of people than federal law does. Municipalities have to be careful to avoid discrimination whenever they are involved in the creation of housing or implementation of a housing program. Municipalities also

must be careful not to create land use regulations that intentionally discriminate against a protected group or have the effect of discrimination against a protected group.

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[1] See Buchanan v. Warley, 245 U.S. 60 (1917) (law disallowing people to sell homes to non-white people unconstitutional); Shelley v. Kraemer, 334 U.S. 1 (1948) (covenants that restricted sales to non-white people unconstitutional).

[2] See, *e.g.*, Barrows v. Jackson, 346 U.S. 249 (1953) (courts cannot grant damages for failure to carry forward covenant restricting sales to white people in deeds); Reitman v. Mulkey, 387 U.S. 369 (1967) (state constitutional amendment that disallowed any law limiting a property owner's refusal to rent property deemed unconstitutional); Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968) (holding that 42 U.S.C. 1982 "bars all racial discrimination, private as well as public, in the sale or rental of property").

[3] See Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601-19); see also Chap. 426 of the Acts of 1957 (prohibiting discrimination in housing under G.L. c. 151B).

[4] See Chapter 11 of the Acts of 2001 (prohibiting age discrimination in housing); Chapter 355 of the Acts of 2004 (prohibiting discrimination against veterans in housing); Chapter 199 of the Acts of 2011 (prohibiting housing discrimination based on gender identity).

[5] See Metropolitan Area Planning Council, Fair Housing and Equity Assessment for Metropolitan Boston, pp. 35, 47 (2015).

[6] See, *e.g.*, id., p. 119.

[7] Note that the discriminatory impact rule set out below would not be a federal constitutional violation. "[A] violation of the Equal Protection Clause requires state action motivated by discriminatory intent." Schuette v. Coalition to Defend Affirmative Action, Integration & Immigrant Rights & Fight for Equality By Any Means Necessary (BAMN), 134 S. Ct. 1623, 1627 (2014).

[8] See Burbank Apartments Tenant Ass'n v. Kargman, 474 Mass. 107 (2016).

[9] See id. at 127.

[10] Id. (internal citations omitted).

[11] Id.