

FAIR HOUSING FACTSHEET: ZONING AND PLANNING

A FACTSHEET FOR CITY PLANNERS



WHAT IS FAIR HOUSING?

Fair housing is the right to choose housing free from unlawful discrimination. The federal Fair Housing Act (FHAct) and North Dakota laws protect people from discrimination in housing based on the following protected classes: race, color, religion, sex, national origin, familial status, disability, marital status, receipt of public assistance, and age (over 40). Discrimination is illegal in housing transactions such as rentals, sales, lending, and insurance. Fair Housing laws also apply to zoning and planning practices.

HOW DOES THE FAIR HOUSING ACT APPLY TO ZONING AND LAND USE?

The FHAct prohibits municipalities and other local government entities from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against individuals protected by fair housing law, whether intentionally or by discriminatory effect. Discriminatory effect can be established by showing that an action, such as a zoning decision, while facially neutral, has either an adverse impact on a particular minority group or harm to the community generally by the perpetuation of segregation.

The FHAct prohibits discrimination in a dwelling, which is defined as “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof” (42 USC §3602(b)). Therefore, decisions related to the development or use of such land must comply with the FHAct’s regulations and cannot be based upon the protected class (i.e. race, religion, disability, etc.) of the residents or prospective residents. The FHAct also requires municipalities and local governments to make reasonable accommodations to zoning and land use rules, policies, practices, and procedures as necessary to provide an individual with a disability equal housing access.

EXAMPLES OF PROHIBITED ACTIVITIES UNDER THE FAIR HOUSING ACT

- A municipality may not reject a proposed affordable housing development in response to neighbors’ fears that such housing will be occupied by racial minorities.
- A municipality may not require neighbor notification or a public hearing only for the development of affordable housing or group homes, but not other types of residential development.
- A municipality may not refuse to allow an exception to a setback requirement as a reasonable accommodation for a resident with a disability who needs to build a wheel-chair ramp in order to access to his or her home.
- A municipality may not impose spacing requirements on group homes for persons with disabilities.
- A municipality may not require additional studies or procedural steps or unnecessarily delay decision making when considering a development that may be occupied by members of the fair housing protected classes.

COMBATTING NIMBYism

Whether the persons to be served are families with children, persons with disabilities, homeless persons, or lower-income minorities, many communities feel strongly that housing for these persons should be provided but “not in my back yard” (NIMBY). This attitude seriously affects the availability of housing for people in these groups and is one of the most difficult challenges jurisdictions encounter in promoting fair housing objectives. Discriminatory stereotypes, fears, and comments about residents or prospective residents of a certain dwelling or area should not influence municipal zoning or land use decisions.

DEFINITION OF "family" AND "single-family" RESIDENTIAL ZONES

Single-family residential zones allow family residential use by right, i.e., without any conditional or special use permit, and are not in and of themselves discriminatory. Local governments have their own definitions of "family", and such definitions may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions are imposed on all such groups regardless of race, religion, etc. However, they may be discriminatory when they exclude group homes for persons with disabilities, or if group homes are allowed only by conditional or special use permit. Further, policies that have a ceiling of 4, or fewer, unrelated adults in a household may be considered discriminatory if they have an adverse impact on minorities, families with children, or people with disabilities.

LAND USE REGULATIONS

Zoning policies such as large minimum lot requirements, minimum multifamily zoning, and age-restricted zoning may restrict and limit the ability for lower income families and families of color to move into certain neighborhoods and suburbs. Such strict zoning restrictions limit the affordability and number of multifamily housing rental opportunities and should be carefully considered in light of fair housing laws.

SUGGESTED FAIR HOUSING STRATEGIES

Adopt a Reasonable Accommodation Policy

This will provide a written procedure, especially for developers of housing for persons with disabilities, to follow when requesting reasonable accommodations in zoning and land use decisions in addition to guidelines for the Planning Commission to follow when considering requests.

Adopt an Inclusionary Zoning Policy

Inclusionary zoning promotes mixed-income development and results in many benefits for communities, particularly the creation of affordable places to live in desirable neighborhoods. Neighborhoods which are ethnically and economically integrated provide greater opportunity for creating a diverse work force and more diverse and vibrant communities.

Affirmatively Furthering Fair Housing

- Consider specific changes that should be made in zoning or building occupancy ordinances or regulations to foster inclusion of lower-income housing, including housing accessible to persons with disabilities and families with children in developments intended for households with higher incomes.
- Ensure that the ordinances and regulations do not contain special rules or restrictions for housing that only apply to individuals with physical or mental disabilities (i.e. requiring individuals with mental disabilities to show they have the capacity to live independently, or prohibiting a group of persons with mental illness from residing in an area where other groups of unrelated adults may reside)
- Consider specific changes that should be made in policies and procedures, other than those relating to zoning and building occupancy, to promote greater variation in the location of lower-income housing.

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