

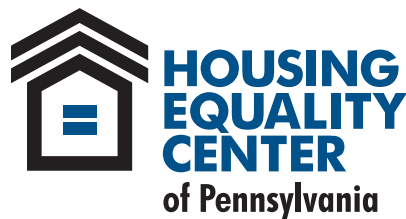


# FAIR HOUSING GUIDE *for*

## Local Governments

The Housing Equality Center of Pennsylvania is a nonprofit organization dedicated to advancing fair and equal access to housing opportunities for all Pennsylvanians. We provide education on fair housing rights to consumers and organizations serving members of the protected classes and offer training and technical assistance to private and nonprofit housing providers and local governments. The Housing Equality Center provides fair housing counseling and testing investigation services for victims of housing discrimination in the City of Philadelphia and in Bucks, Chester, Delaware, Lehigh, Montgomery, and Northampton Counties in Pennsylvania.

If you have found this manual helpful and would like to support efforts to assist residents of Pennsylvania regarding their fair housing rights, please consider making a contribution to the Housing Equality Center by visiting [equalhousing.org](http://equalhousing.org) and clicking on **Donate Now**.



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[equalhousing.org](http://equalhousing.org)

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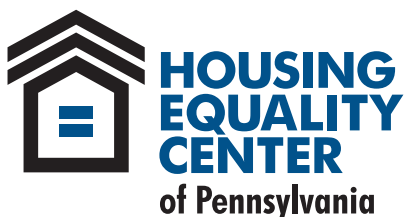
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# FAIR HOUSING GUIDE *for*

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## Local Governments

Fair housing is the right of individuals and families to access the housing of their choice without being subjected to discrimination. This guide was developed to provide local governments, including elected officials, municipal staff, zoning board members, and solicitors, an introduction to fair housing as it relates to their role in setting and implementing local policy concerning residential uses. This guide is designed to assist local governments in understanding their compliance responsibilities under the Fair Housing Act and how to increase fair housing choice for their residents and constituents.



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# INTRODUCTION TO FAIR HOUSING

## The Fair Housing Act

Title VIII of the Civil Rights Act of 1968, as amended in 1988, is known as the Fair Housing Act. The Fair Housing Act prohibits discrimination in housing and housing related transactions on the basis of:

- **Race**
- **Color**
- **Religion**
- **National origin**
- **Sex**
- **Disability**
- **Familial status** (households with children under 18 in a household, pregnant women or anyone in the process of adopting or securing legal custody of a child).

It is against the law to do any of the following based on a protected class:

- Refuse to rent or sell housing
- Refuse to negotiate housing
- Make housing unavailable or deny that housing is available
- Set different terms, conditions or privileges for the sale or rental of housing, a mortgage, home loan, home insurance or any other housing transaction
- Advertise in a discriminatory manner
- Threaten, coerce or intimidate anyone exercising a fair housing right or assisting others in exercising those rights

## Types of Dwellings and Housing Transactions Covered by the Fair Housing Act

The Fair Housing Act is a very broad law covering many types of housing and housing related transactions. In addition to apartments and homes for rent or for sale, the Fair Housing Act's protections also apply to:

- Public housing
- Condominiums and homeowners associations
- College and university dormitories
- Nursing homes
- Mobile home parks
- Group homes for people with disabilities
- Sober homes and addiction recovery homes
- Some homeless shelters
- Vacant land which may be developed into residential dwellings
- Mortgage lending
- Homeowners and renters insurance
- Appraisals
- Zoning and land use
- Other municipal ordinances, policies, and practices



## Additional Protections for People with Disabilities

Individuals with disabilities are entitled to additional protections under the Fair Housing Act. These protections include:

- A right to reasonable accommodations and reasonable modifications when necessary to provide equal opportunity to use and enjoy a dwelling
- Housing providers are not permitted to inquire into the nature or extent of a person's disability
- Design and construction requirements, which provide a basic level of accessibility in certain types of new multifamily construction

## Fair Housing Responsibilities of Local Governments

The Fair Housing Act makes unlawful a broad range of housing practices that discriminate against individuals on the basis of any of the protected classes. Although the regulation of local issues such as land use and zoning is traditionally reserved to local governments, federal laws such as the Fair Housing Act take precedence over incompatible state and local laws. The Fair Housing Act therefore prohibits ordinances, policies, and practices that discriminate based on any characteristic protected under the Act. Prohibited practices as defined in the Act include making unavailable or denying housing because of a protected characteristic. Housing includes not only a variety of dwellings intended for occupancy as residences, but also vacant land that may be developed into residential uses. Substantial case law exists that recognizes the liability of local government entities for implementing policies or practices that restrict housing choice for members of protected classes.

Additionally, local governments that receive federal funding have a duty under the Fair Housing Act to **Affirmatively Further Fair Housing**. See **Affirmatively Further Fair Housing** on page 22 for more information.

## Exemptions to the Fair Housing Act

The Fair Housing Act contains several limited exemptions:

- Owner occupied buildings with four or fewer rental units are exempt from the Fair Housing Act when the owner does not use the services of a broker or agent. However, the Pennsylvania Human Relations Act establishes that only owner occupied buildings with two or fewer units are exempt from state fair housing laws.
- Single family housing sold or rented by a private owner without the use of a broker or agent is exempt from the Fair Housing Act if the private individual owner does not own more than three such single family homes at one time.
- Housing operated by religious organizations and private clubs may limit occupancy to members as long as membership does not exclude individuals based on their race or national origin.
- Qualified senior housing is exempt from the familial status provision of the Fair Housing Act, but must comply with the Housing for Older Persons Act (HOPA) definition with either 80% of households having at least one resident age 55 and up or with 100% of residents being age 62 and up.

Even if a property is exempt from the Fair Housing Act, there is never an exemption for discriminatory statements or advertising in a discriminatory manner.

## Permissible Activities under the Fair Housing Act

- The Fair Housing Act does not guarantee any person a right to housing or housing related financial services they cannot afford.
- Property owners may set rents or sales prices at whatever the market will bear.
- An agent or property owner may refuse to rent to a person if they have reliable information that the person has a recent history of violent, disruptive, or destructive behavior.
- An agent or property owner can adopt and apply uniform, objective, and nondiscriminatory criteria designed to evaluate a prospective tenant or buyer's credit worthiness, income level, or criminal history.
- An agent or property owner is not required to rent to current users and dealers of illegal drugs.
- In Pennsylvania, landlords may choose whether or not to participate in the housing choice voucher program (Section 8) as long as source of income is not protected under local law.

## Theories of Discrimination Under the Fair Housing Act

**Disparate Treatment** occurs when individuals who are similarly situated or qualified are treated differently based on their membership in a protected class or when housing occupied by members of protected classes is treated differently than other similar housing. For example, a municipality failing to make a reasonable accommodation for a resident with a disability, denying a permit to a developer of affordable housing due to resident opposition regarding the race of the residents who are likely to live there, or requiring a burdensome process for locating an addiction recovery home in the municipality would all constitute disparate treatment under the Fair Housing Act.

**Disparate Impact** occurs when a facially neutral policy or practice results in disproportionate harm to members of protected classes as compared to the general population. A land use or zoning practice may result in a discriminatory effect if it causes or predictably will cause a disparate impact or creates or perpetuates segregated housing patterns because of a protected characteristic and if there is not a sufficient nondiscriminatory interest served by the policy. For example, mandated design criteria, large minimum lot or unit size, or other requirements that result in an exceedingly high per-unit cost may result in illegal discrimination if these policies have a disparate impact on members of one or more protected classes.



## Penalties for Violating the Fair Housing Act

Individuals and entities harmed by housing discrimination may choose to pursue remedies in several venues. Complainants may file lawsuits in either state or federal court or may file administrative complaints with either the U.S. Department of Housing and Urban Development's (HUD) Office of Fair Housing and Equal Opportunity or the Pennsylvania Human Relations Commission (PHRC). The U.S. Department of Justice's (DOJ) Housing and Civil Enforcement Section and the Pennsylvania Attorney General's Civil Rights Enforcement Section investigate systemic fair housing violations involving multiple complainants.

Remedies in fair housing cases may include:

- Economic monetary damages (such as reimbursement of moneys expended by a developer in completing additional studies that were required due to discriminatory treatment)
- Non-economic monetary damages (for example, emotional damages)
- Punitive damages
- Civil penalties (currently up to \$21,410 for a first violation, up to \$53,524 for a second violation, and up to \$107,050 for a third violation)
- Government monitoring
- Payment of complainant's attorney's fees
- Bringing policies and practices into compliance (such as amending a discriminatory ordinance)
- Injunctions (for example, approving a previously denied proposal for an affordable housing complex or withdrawing a discriminatory code enforcement citation)
- Loss of tax credits, in the case of housing that utilizes this type of funding

## Other Laws and Rules

The Pennsylvania Human Relations Act (PHRA) offers additional protections beyond the federal Fair Housing Act. The PHRA makes it illegal to discriminate in a housing related transaction on the basis of age (over 40) and for being a user, handler, or trainer of an assistance animal for individuals with disabilities.

Many municipalities have passed ordinances that prohibit discrimination based on additional protected classes such as sexual orientation and gender identity, military status, or source of income. Typically, these ordinances are enforced by a local human relations commission with its own process for adjudicating residents' complaints. Currently, at least 55 municipalities in Pennsylvania have ordinances which include additional protected classes.

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, and national origin in any program receiving federal funding and prohibits state and municipal governments from denying access to public facilities based on race, color, religion, or national origin.

The Americans with Disabilities Act (ADA) of 1990 is a broad civil rights law guaranteeing equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services and telecommunications. The ADA prohibits discrimination based on disability in programs and activities provided by public entities (including housing related programs) and in goods, services, facilities, and privileges of places of public accommodation owned or operated by private entities.

The Architectural Barriers Act states that all buildings, other than privately owned residential facilities, constructed by, on behalf of, or leased by the federal government, or buildings financed in whole or in part with federal funds must be physically accessible for persons with disabilities.

Section 504 of the Rehabilitation Act of 1973, prohibits discrimination based on disability in any program or activity receiving federal funding.

# DISABILITY AND THE FAIR HOUSING ACT

## Definition of Disability

A disability is defined by the Fair Housing Act as a **“physical or mental impairment that substantially limits one or more of a person’s major life activities.”** Major life activities can include caring for one’s self, walking, seeing, hearing, speaking, breathing, learning, and working. Individuals who require the use of a walker, a wheelchair, an assistance animal, or a personal care attendant are protected against housing discrimination. The definition of disability under the Fair Housing Act also includes people who have a **history of an impairment** and people who are **perceived** as having an impairment (even if they are not actually disabled). Disabilities may include mental or emotional illness, difficulties associated with aging, HIV/AIDS, and those recovering from alcoholism or drug addiction (individuals who are currently using illegal drugs are not protected). Individuals that are discriminated against because they are associated with someone with a disability are also protected under the law.



# REASONABLE ACCOMMODATIONS

## Reasonable Accommodations for People with Disabilities

A reasonable accommodation is a change in rules, policies, practices, or services that enables a person with a disability an equal opportunity to use and enjoy a dwelling. Like housing providers, local governments are required to permit reasonable accommodations to land use and other policies and procedures when necessary for residents with disabilities.

Examples of reasonable accommodations include:

- Assigning a person with a disability a reserved parking spot nearest to their home even though street parking is generally on a first come, first served basis
- Permitting an exception to a setback requirement for a homeowner who needs to construct a wheelchair ramp
- Making an exception to the zoning ordinance's definition of family to allow a greater number of unrelated persons to occupy a group home for adults with developmental disabilities located in a large single family house

The Fair Housing Act does not require local governments to implement formal procedures for residents to request reasonable accommodations, however adopting a formal procedure and training staff on its implementation can help to ensure that municipalities are meeting their obligation to permit reasonable accommodations. If a municipality chooses to implement a formal procedure, it may not be overly burdensome or contain invasive questions. In addition, municipalities must consider reasonable accommodation requests from residents who did not use their preferred form or procedure for making their request.

## What is Reasonable?

A request for an accommodation is considered reasonable if that request:

- Does not cause an undue financial and administrative burden to the municipality
- Does not cause a fundamental alteration in the nature of the program or service (or zoning district)
- Will not cause harm or damage to others
- Is technologically possible

**Example:** It would be unreasonable for a person with a disability to ask that they be permitted to make accessibility modifications that were inconsistent with a township's building codes and would result in major structural and safety hazards.

**Example:** It would be unreasonable for a resident to request that a borough pay for engineering costs associated with designing accessible routes from their sidewalk to the entrances of their home.

**Example:** It would be unreasonable for a developer to request that they be permitted to build a high rise apartment building for elderly people with disabilities on a small parcel of land in the center of a low density single family district.

## What if a Local Government Believes a Request is Unreasonable?

Each reasonable accommodation request is very individual and each request must be determined on a case by case basis. **If the accommodation proposed by an individual is unreasonable, the municipality must engage in an interactive dialogue to determine if there is another solution or alternative accommodation that will meet the person's needs.**

A reasonable alternative accommodation may require negotiation between the resident and the municipality. If the alternative accommodation would effectively meet the disability related needs and is reasonable and does not pose an undue financial and administrative burden on the municipality, the accommodation must be granted. The process of negotiating a reasonable accommodation should be documented by both the resident and local government to protect their own interests should a dispute arise.

A municipal government may not stall or delay in responding to a request for reasonable accommodation and should not subject reasonable accommodation requests to lengthy review processes or fees. Court cases have established that a delay in the approval process can be considered a denial of an accommodation.

## When Can a Local Government Request Verification of a Resident's Disability and Need for the Requested Accommodation?

If the person's disability is obvious and need for the reasonable accommodation is also obvious, the housing provider or local government may not ask for additional documentation.

If the disability is obvious, but the need for the reasonable accommodation is not clear, the housing provider or local government is only permitted to request information to evaluate the disability related need.

If neither the disability nor the need for the accommodation are obvious, the housing provider or local government may request documentation both confirming that the individual has a disability and the disability related need for the reasonable accommodation.

A housing provider or local government may not ask:

- Questions about the nature or severity of a disability or for a resident to reveal their specific diagnosis
- If a resident is able to live independently
- Questions that would require a resident to waive their rights to confidentiality regarding their medical condition or history
- To see a resident's medical records





## Case Example: Refusal to Provide Reasonable Accommodation

### United States v. City of Philadelphia

The city was ordered to provide a reasonable accommodation that would allow an exception to the rear yard requirement of the city's zoning ordinance so that a non-profit organization could rehabilitate a building to use for a group home for people with disabilities.

## For Further Reading

DOJ and HUD have provided a joint statement on reasonable accommodations under the Fair Housing Act. This memo contains technical guidance on rights and obligations of persons with disabilities and housing providers under the Fair Housing Act and can be found at: [www.equalhousing.org/wp-content/uploads/2014/09/2004-Reasonable-Accommodations-FAQ.pdf](http://www.equalhousing.org/wp-content/uploads/2014/09/2004-Reasonable-Accommodations-FAQ.pdf)

# DESIGN AND CONSTRUCTION REQUIREMENTS

## Accessibility and New Construction Under the Fair Housing Act

All “covered multifamily dwellings” designed and constructed for first occupancy after March 13, 1991, are required by the Fair Housing Act to be readily accessible to and usable by persons with disabilities regardless of whether a property is privately funded or is publicly funded. In buildings with four or more dwelling units and at least one elevator, all dwelling units and all public and common use areas must comply with the Fair Housing Act’s design and construction requirements. In buildings with four or more dwelling units and no elevator, all ground floor units and public and common use areas must comply with the design and construction requirements under the Fair Housing Act.

To comply with the accessibility requirements of the Fair Housing Act, the housing must include the following features:

- An accessible building entrance on an accessible route
- Accessible public and common-use areas
- Doors that allow passage by a person in a wheelchair
- Accessible route into and through the dwelling unit
- Light switches, thermostats and other environmental controls in accessible locations
- Reinforcements in bathroom walls for later installation of grab bars
- Kitchens and bathrooms that allow a wheelchair to maneuver about the space

The accessibility requirements of the Fair Housing Act should not be confused with those of the ADA. The ADA applies only to common-use areas in residential developments if the facilities are open to persons other than owners, residents, and their guests (such as the sales or rental office, community rooms that are available to outside events, etc.).

The Fair Housing Act encourages, but does not require, local governments to develop and implement procedures for the review and approval of newly constructed covered multifamily dwellings to determine whether they meet the requirements of the Act. However, in circumstances where a municipality plays a role in the development of new multifamily housing that is not limited to review and approval, such as serving as a partner or funder in the development of a subsidized complex, the municipality may be held liable for failure to comply with the Fair Housing Act accessibility requirements.

## For Further Reading

DOJ and HUD have provided a joint statement on design and construction requirements for covered multifamily dwellings under the Fair Housing Act. In addition, HUD has a Fair Housing Act design manual for builders and developers with detailed information on each of the seven requirements. These resources can be found at: [www.equalhousing.org/wp-content/uploads/2014/09/2013-Accessibility.pdf](http://www.equalhousing.org/wp-content/uploads/2014/09/2013-Accessibility.pdf) [www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf](http://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf)

Fair Housing Accessibility FIRST is an initiative designed to promote compliance with the Fair Housing Act design and construction requirements. Fair Housing Accessibility FIRST offers comprehensive and detailed training programs, information on accessibility standards that provide “safe harbors” under the Fair Housing Act, and a toll-free information line for technical guidance and support.

Design and Construction Resource Center: 888-341-7781, [www.fairhousingfirst.org](http://www.fairhousingfirst.org)



# ZONING AND LAND USE

## Zoning and the Fair Housing Act

According to the Fair Housing Act, a dwelling includes “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.” Therefore, zoning ordinances and decisions related to the development or use of such land may not discriminate based upon the race, color, religion, national origin, sex, disability or familial status of the residents or potential residents who may live in the dwelling.

Examples of land use and zoning laws or practices that may violate the Fair Housing Act include:

- Implementing zoning or land use policies or making decisions that treat housing that may be occupied by protected classes less favorably than housing occupied by other residents
- Blocking group homes for people with disabilities or multifamily or affordable housing in response to neighbors’ fears or prejudices about persons with disabilities or racial and ethnic minorities
- Requiring additional studies or procedural steps or unnecessarily delaying decision making when considering a dwelling or development that may be occupied by members of the protected classes
- Refusing to make reasonable accommodations for persons with disabilities in land use and zoning policies and procedures





A land use or zoning practice may be found to be intentionally discriminatory even if there is no personal bias on the part of individual government officials. For example, municipal zoning practices or decisions that reflect acquiescence to community bias or fears about members of protected classes may be intentionally discriminatory, even if the municipal officials responsible for the decisions do not personally hold such views.

Decisions motivated by a purported desire to benefit a particular group can also violate the Fair Housing Act if they result in differential treatment of another group because of a protected characteristic. For example, a zoning amendment that is intended to incentivize the development of senior housing may have the effect of discriminating against families with children.

## **Case Example: Denial of an Affordable Housing Complex**

### **PathStone Housing Corp. v. Whitehall Township, PA**

The township of Whitehall denied a proposed project to construct 49 units of affordable multifamily housing on the basis that there was inadequate parking after residents opposing the project complained that an apartment building would crowd and change the makeup of the neighborhood. A HUD complaint was filed by the developer, alleging that Whitehall discriminated because of race, national origin, family status, and disability when it denied the proposal. A settlement agreement was reached that required the township to pay \$375,000 for the developer's legal fees, to actively promote the project, and to revise their zoning ordinance in order to remove barriers to affordable housing.

## **Families with Children**

The Fair Housing Act protects families with children from discrimination in housing, therefore, local governments may not enact zoning or land use policies that restrict where families may live or treat housing that may be occupied by families less favorably than housing that will be occupied solely by adult-only households.

There is one exemption to the Fair Housing Act that applies to zoning and land use. Housing for older persons (where 80% of the units are occupied by at least one person over the age of 55 or 100% of occupants are age 62 or older) is exempt from the portion of the Fair Housing Act that prohibits discrimination against families with children. According to the Housing for Older Persons Act, a housing facility or community for older persons may include "a municipally zoned area." Therefore, although a municipality would be prohibited under the Fair Housing Act from making a zoning or land use decision based on the presence of families with children residing in a dwelling or proposed development, any area zoned specifically for housing for older persons would be exempt from this prohibition.

A local government that zones an area to exclude families with children must continually ensure that housing in that zone meets the requirements of the exemption. If the zoning district fails to consistently meet the Housing for Older Persons Act definition, the municipality will have violated the Fair Housing Act.

Examples of discrimination against families with children in zoning and land use:

- Permitting only one bedroom units in multifamily developments in an attempt to limit the number of children in the school district



- Different use and/or dimensional regulations for age restricted and family housing in the same district, for example, permitting senior housing to be six stories high while limiting other multifamily housing to three stories
- A zoning ordinance definition of “age-restricted” or “senior” housing that is inconsistent with that in the Housing for Older Persons Act

## Group Homes for People with Disabilities

Under the Fair Housing Act, zoning ordinances may not contain provisions that treat uses for people with disabilities differently than other similar uses. This includes group homes for people with disabilities, which according to HUD and the DOJ refers to any dwelling that is or will be occupied by unrelated persons with disabilities.

Fair Housing protections extend to a broad range of group homes:

- Group homes may serve individuals with any type of physical or mental disability, or individuals with a variety of disabilities.
- Group homes may or may not provide support services.
- Group homes may be operated by individuals or organizations, either for profit or nonprofit.
- Group homes may or may not include supervision of residents and may or may not be licensed under a particular state or local program.
- Group homes may include “addiction recovery homes” or “sober homes” for persons who are in recovery from alcohol or drug abuse.

Generally, group homes for people with disabilities housed in single family homes should be treated the same as other single family residences and should not be prohibited from being located in any residential district where similar single family residences are permitted. It is a violation of the Fair Housing Act for local governments to limit group homes for specific types of disabilities, such as drug addiction.

In addition, local governments are required to permit reasonable accommodations for group homes when necessary for residents with disabilities to have an equal opportunity to use and enjoy the dwelling. For instance, the definition of family in a zoning ordinance can affect group homes by restricting the number of unrelated individuals that can occupy a single family home. While it is permissible for a municipality to implement a nondiscriminatory limit on the number of unrelated persons that may constitute a household, group homes for persons with disabilities are entitled to exceptions to definitions of family as a reasonable accommodation.

Examples of discrimination against persons with disabilities residing in group homes:

- Prohibiting group homes in some or all residential districts
- Requiring group homes be spaced a certain distance from each other
- Rules that place greater procedural or other burdens on group homes versus other residential uses
- Enforcing zoning ordinance provisions or other laws more strictly against group homes
- Licensing requirements or registration requirements that have a discriminatory effect on persons with disabilities residing in group homes
- Exclusion of addiction recovery homes
- Refusing to permit reasonable accommodations

### **Case Example: Illegal Spacing Requirement**

#### **Horizon House Developmental Services, Inc. v. Township of Upper Southampton, PA**

A 1,000 foot spacing requirement for group homes was found to violate the Fair Housing Act. Furthermore, requiring group homes to obtain a variance to locate within 1,000 feet of another group home was found to be an insufficient reasonable accommodation, and the township was ordered to cease enforcement of the spacing requirement.

### **Case Example: Definition of Family**

#### **ReMed Recovery Care Centers v. Township of Willistown, PA**

The township was ordered to make a reasonable accommodation from its limitation on the number of unrelated persons that can constitute a family under its zoning ordinance, allowing a group home of eight unrelated individuals to occupy a group home rather than the five permitted under the zoning ordinance.

### **For Further Reading**

DOJ and HUD have provided a joint statement designed to help state and local governments comply with the Fair Housing Act when making zoning and land use decisions related to various types of housing, including group homes for persons with disabilities. This memo is available at: [www.equalhousing.org/wp-content/uploads/2016/12/HUD-DOJ-Joint-Statement-on-State-and-Local-Land-Use-Laws-and-Practices.pdf](http://www.equalhousing.org/wp-content/uploads/2016/12/HUD-DOJ-Joint-Statement-on-State-and-Local-Land-Use-Laws-and-Practices.pdf)



# NUISANCE AND CRIME-FREE HOUSING ORDINANCES

Many municipalities have enacted nuisance or crime-free housing ordinances. While the existence of these types of ordinances is not in itself illegal, nuisance and crime-free ordinances may be implemented or enforced in a way that violates the Fair Housing Act.

Nuisance ordinances typically label various types of conduct associated with a property “nuisances” and require landlords to abate the nuisance, often by evicting the tenant, under the threat of penalties such as fines or loss of rental permits. Nuisance conduct under these ordinances often includes a specific “excessive” number of calls for emergency services within a period of time, either by a tenant or by a third party such as a neighbor. Many such ordinances do not exempt calls where the person in need of services is a victim of domestic violence or another crime or is otherwise in need of police, medical, or other emergency assistance or differentiate whether the resident is a perpetrator or victim of domestic violence or other crimes.

Similarly, crime-free housing ordinances typically require or promote the use of crime-free lease provisions and penalize landlords who fail to evict tenants when a violation of federal, state, or local law has occurred on or near the property or by a tenant, resident, or guest. Crime-free ordinances may define lease violations broadly and/or ambiguously and may require landlords to evict tenants based on an arrest alone.



Megan Bolin

The enactment or enforcement of nuisance and crime-free housing ordinances may constitute a violation of the Fair Housing Act in several circumstances. These types of ordinances may be passed for a discriminatory reason, for example, in response to resident fears or biases regarding racial or ethnic minorities, families with children, or other protected classes, or may be selectively enforced against residents who are members of protected classes. Nuisance or crime-free ordinances may also be implemented in a way that results in a discriminatory effect on victims of domestic violence, people with disabilities, or elderly individuals who have a need for more frequent emergency services than the general population. Local governments must ensure that these types of ordinances are enacted only for legitimate, nondiscriminatory reasons and that they are enforced in a way that does not disproportionately affect members of protected classes.

## Case Example: Nuisance Ordinances

### **Briggs v. Borough of Norristown**

A Norristown ordinance penalized landlords when police were called to a rental property three times in four months for “disorderly behavior,” effectively requiring them to evict the tenants. A resident was threatened with eviction after calling the police several times for protection from an abusive ex-boyfriend. After a final severe attack that necessitated the resident be airlifted to the hospital, the landlord was forced to either evict her or face a fine of \$1,000 a day. A lawsuit was filed that alleged the Borough’s enforcement of the ordinance to punish victims of domestic violence for seeking emergency assistance constituted discrimination based on gender. A settlement agreement was reached that required the Borough to pay \$495,000 in damages and legal fees, to repeal the ordinance, and to not pass future laws punishing residents or landlords who request emergency assistance.

## For Further Reading

HUD’s general counsel has provided guidance regarding the enforcement of local nuisance and crime-free ordinances against victims of domestic violence and others who require emergency services. This guidance may be found at:

[www.equalhousing.org/wp-content/uploads/2016/12/Local-Nuisance-Ordinances-and-the-Fair-Housing-Act.pdf](http://www.equalhousing.org/wp-content/uploads/2016/12/Local-Nuisance-Ordinances-and-the-Fair-Housing-Act.pdf)



# OTHER FAIR HOUSING CONSIDERATIONS FOR LOCAL GOVERNMENTS

## Code Enforcement

Enforcing property maintenance and other codes more strictly against members of protected classes is a violation of the Fair Housing Act. Municipalities should ensure that they are not enforcing otherwise neutral laws or policies differently because of the residents' protected characteristics.

Examples of discriminatory code enforcement:

- Citing individuals who are members of a particular protected class for violating code requirements for property upkeep while not citing other residents for similar violations
- Enforcing occupancy standards, limits on unrelated persons, or health and safety standards only against group homes for disabilities, but not other types of households
- Initiating code enforcement via drive-by inspections in neighborhoods occupied by members of protected classes (or against protected class residents) while responding only to neighbor complaints in others
- Retaliatory code enforcement against an individual who is attempting to exercise their fair housing rights



## Use and Occupancy and Rental Permitting Procedures and Applications

Some municipalities request information that could be used to discriminate or information regarding disability in rental licensing or use and occupancy applications or annual notifications. Caution should be taken when requesting information regarding renters' housing subsidies and details regarding the source of housing subsidies or rental assistance. In some localities, for example, the receipt of a housing voucher may indicate that a renter is more likely to be a protected class member and in many situations the source of rental assistance may reveal a renter's protected characteristic, such as housing assistance for persons with HIV/AIDS, victims of domestic violence, or refugee resettlement assistance.

## Reasonable Accommodations for Individuals Who Engage in Hoarding

Hoarding involves acquiring and saving large numbers of objects resulting in living spaces that are so cluttered that they are difficult or dangerous to live in. Hoarding can sometimes create sanitary, fire, and other health and safety issues that can violate local codes.

A compulsive hoarder meets the definition of a person with a disability under the Fair Housing Act and has a right to request a reasonable accommodation in an effort to preserve their housing. Sanitary hazards, fire hazards, and health and safety issues should not be and cannot be permitted to remain, but the person who is engaging in hoarding can request a reasonable accommodation to allow additional time to clean and dispose of excess clutter. For example, when a code enforcement officer determines that hoarding is causing an unsafe condition in a home and issues a citation, the resident can request time to obtain any necessary supports or services and to bring the unit into compliance. If a deadline is given by which the unit must be clean and clutter free, the resident can request an extension within a reasonable time frame to bring the unit into a safe, satisfactory condition.

## Ordinances Regarding Undocumented Immigrants

So called "illegal immigrant" ordinances make it illegal for landlords to rent to undocumented immigrants (and for employers to hire them) and sometimes require residents and employees to prove citizenship or legal residency to the municipality. These types of ordinances typically impose various penalties, such as fines and the loss of rental or business licenses, on landlords and business owners for violations and function to encourage housing providers to discriminate on the basis of national origin. A number of cases have held that these laws are both discriminatory and illegally usurp the federal government's exclusive power over immigration.

### Case Example: Undocumented Immigrant Ordinance

#### **Lozano v. City of Hazelton**

The City of Hazelton passed a restrictive "Illegal Immigration Relief Act" ordinance which imposed a \$1,000-per-day fine on landlords who rented to undocumented immigrants, revoked the business license of any employer who hired them, declared English as the official language, and barred city employees from translating documents to any other language without approval. A federal judge ruled that Hazelton was prohibited from enforcing any of the provisions of this ordinance. After the ruling survived an appeal, the city was ordered to pay \$1.4 million in plaintiff's attorneys' fees.



# ADVANCING FAIR HOUSING WHILE PROTECTING FREE SPEECH

Statements made by a housing provider or local government official concerning housing are subject to a greater degree of regulation than ordinary speech, because they are considered commercial speech. Under the Fair Housing Act it is unlawful to “make, print, or publish...any notice, statement, or advertisement ... that indicates any preference, limitation, or discrimination based on” any of the protected classes. This includes verbal statements. Therefore, local government officials may be liable for discriminatory statements concerning housing.

Local government officials are often in the difficult position of balancing the fact that they are prohibited from infringing on the First Amendment rights of residents and also required to protect fair housing rights. Individuals may not be prevented from distributing petitions or flyers, speaking out publicly or testifying at hearings, being interviewed by the media, or expressing objectionable or bigoted opinions in response to members of a protected class moving into a neighborhood or the development of housing that may be occupied by protected classes. However, government officials may not rest their decisions on discriminatory ideas or opinions, even when their constituents pressure them to do so. Municipal officials must consider both their obligation to hear all opinions expressed by constituents and their responsibility to take actions that are not discriminatory.



# AFFIRMATIVELY FURTHERING FAIR HOUSING

From its inception, the Fair Housing Act has not only prohibited discrimination in housing related activities and transactions but also imposed a duty on the federal government to affirmatively further fair housing (AFFH). Because, in practice, HUD programs have historically perpetuated patterns of racial and economic segregation the AFFH provision seeks to begin to remedy the impact of historical segregation.

The AFFH obligation covers all activities, policies, and procedures of recipients and subrecipients of federal housing funding including Community Development Block Grant (CDBG) entitlement jurisdictions and public housing authorities. These entities are responsible to hold staff and subrecipients, including municipalities, accountable for complying with fair housing requirements in all their projects and activities. Any jurisdiction that receives CDBG funding must develop an analysis of the barriers to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of impediments identified, and maintain records reflecting the analysis and actions. There is no requirement that a subrecipient municipality have its own separate plan for affirmatively furthering fair housing. However, subrecipients should be involved in the process of determining locally appropriate actions to affirmatively further fair housing and should play a role in carrying out those actions.



Megan Bolin



# INCREASING FAIR HOUSING CHOICE FOR RESIDENTS AND CONSTITUENTS

There are many strategies that local governments can employ to increase fair housing choice for residents in their jurisdictions. The following best practices can help to ensure that residents are educated about their fair housing rights and that municipal officials and staff are aware of their fair housing responsibilities.

- Municipalities should make consumer information regarding fair housing rights available to their constituents. The Housing Equality Center has developed various publications for consumers that are available in both hard copy and electronic format. These publications inform consumers of their rights under fair housing laws and their options for redress if they experience housing discrimination. Municipalities may request paper copies or link to downloadable versions of these resources.
- Similarly, local governments should offer fair housing compliance resources to housing providers. Some municipalities send out fair housing brochures to landlords with all rental permit applications and renewal notices and brochures on the Fair Housing Act design and construction requirements with building permit applications. These resources can also be provided on the appropriate website page.
- All elected officials, staff, zoning board members, and members of other boards or committees should receive training on fair housing. The Housing Equality Center offers training and technical assistance to local governments on conducting their operations in compliance with the Fair Housing Act.
- Municipalities should develop a procedure for dealing appropriately with reasonable accommodation requests and all officials and staff should be trained on implementing this procedure in a manner that is consistent with fair housing laws.
- Zoning ordinances and nuisance or crime-free housing ordinances should be reviewed to ensure that they do not contain Fair Housing Act violations or impediments to housing choice. Municipalities should seek legal advice if there is any question as to whether an ordinance is consistent with fair housing laws.
- Implement practices to ensure fair public meetings when there is community opposition to proposed housing for members of protected classes or to ordinance changes that increase access to housing for protected classes. Local officials can adopt various strategies to prevent discriminatory decision making or the perception of discriminatory decision making. Informing the public of the municipality's responsibility to comply with fair housing laws, arranging for a presentation by the developer or a fair housing organization, requiring a sign-in-sheet for public comments, enforcing time limits for public comment, prohibiting cross-talking, and separating public comment and decision-making meetings can all support a fair and balanced consideration of these issues.
- Local governments should take advantage of community participation opportunities when fair housing analysis and planning is undertaken by CDBG entitlement jurisdictions as part of their AFFH obligation. The AFFH planning process requires that jurisdictions link future goals and activities to the fair housing impediments identified and offers a chance for municipalities to advocate for the consideration of the specific housing needs of their residents.



## Training and Technical Assistance on Fair Housing Compliance

The **Housing Equality Center of Pennsylvania** offers information, training, and technical assistance to housing providers and local governments on conducting their operations in compliance with the Fair Housing Act. Please note that the Housing Equality Center does not provide legal advice.

267-419-8918 or 866-540-FAIR (3247)

[info@equalhousing.org](mailto:info@equalhousing.org)

[equalhousing.org](http://equalhousing.org)

## Filing a Fair Housing Discrimination Complaint

If a consumer believes they have experienced housing discrimination, it is important for that individual to maintain records and documentation with names, dates, and details regarding the incident to help prove their case.

Fair housing complaints can be filed with the U.S. Department of Housing and Urban Development for up to one year from the incident or with the Pennsylvania Human Relations Commission for up to 180 days from the incident. In addition, a lawsuit can be filed in federal court for up to two years.

If a housing provider or other entity is found to have discriminated, victims of housing discrimination can be awarded out-of-pocket costs incurred while obtaining alternative housing and any additional costs, including attorney's fees. Non-economic damages for humiliation, mental anguish, or other psychological injuries may also be recovered.

In the City of Philadelphia or in Bucks, Chester, Delaware, Lehigh, Montgomery, or Northampton Counties in Pennsylvania, consumers can call the **Housing Equality Center of Pennsylvania** for counseling, investigation, and options for enforcement based on the circumstances of the case.

267-419-8918 or 866-540-FAIR (3247)

[info@equalhousing.org](mailto:info@equalhousing.org)

[equalhousing.org](http://equalhousing.org)

To file a complaint with the U.S. Department of Housing and Urban Development, call HUD's Housing Discrimination Hotline at 1-800-669-9777 or visit [www.hud.gov](http://www.hud.gov). To file a complaint with the Pennsylvania Human Relations Commission, call 215-560-2496 or visit [www.phrc.pa.gov](http://www.phrc.pa.gov).

# ADDITIONAL RESOURCES

## For More Information on Reasonable Accommodation and Modification

The U.S. Department of Justice and the U.S. Department of Housing and Urban Development have provided joint statements on **Reasonable Accommodations Under the Fair Housing Act** and **Reasonable Modifications Under the Fair Housing Act**

These statements offer a clear Q&A format providing technical guidance on rights and obligations of persons with disabilities and housing providers under the Fair Housing Act

You can access these Joint Statements at:

[www.equalhousing.org/wp-content/uploads/2014/09/2004-Reasonable-Accommodations-FAQ.pdf](http://www.equalhousing.org/wp-content/uploads/2014/09/2004-Reasonable-Accommodations-FAQ.pdf)

[www.equalhousing.org/wp-content/uploads/2014/09/2008-Reasonable-Modifications-FAQ.pdf](http://www.equalhousing.org/wp-content/uploads/2014/09/2008-Reasonable-Modifications-FAQ.pdf)

## For More Information on Fair Housing Act Design and Construction Requirements

DOJ and HUD have provided a joint statement on design and construction requirements for covered multifamily dwellings under the Fair Housing Act. In addition, HUD has a Fair Housing Act design manual for builders and developers with detailed information on each of the seven requirements.

These resources can be found at:

[www.equalhousing.org/wp-content/uploads/2014/09/2013-Accessibility.pdf](http://www.equalhousing.org/wp-content/uploads/2014/09/2013-Accessibility.pdf)

[www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf](http://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf)

Fair Housing Accessibility FIRST is an initiative designed to promote compliance with the Fair Housing Act design and construction requirements. Fair Housing Accessibility FIRST offers comprehensive and detailed training programs, information on accessibility standards that provide “safe harbors” under the Fair Housing Act, and a toll-free information line for technical guidance and support.

Design and Construction Resource Center: 888-341-7781

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

## For More Information on Zoning and Land Use

DOJ and HUD have provided a joint statement designed to help state and local governments comply with the Fair Housing Act when making zoning and land use decisions related to various types of housing, including group homes for persons with disabilities. This memo is available at:

[www.equalhousing.org/wp-content/uploads/2016/12/HUD-DOJ-Joint-Statement-on-State-and-Local-Land-Use-Laws-and-Practices.pdf](http://www.equalhousing.org/wp-content/uploads/2016/12/HUD-DOJ-Joint-Statement-on-State-and-Local-Land-Use-Laws-and-Practices.pdf)

## For More Information on Nuisance and Crime-Free Housing Ordinances

HUD’s general counsel has provided guidance regarding the enforcement of local nuisance and crime-free ordinances against victims of domestic violence and others who require emergency services. This guidance may be found at: [www.equalhousing.org/wp-content/uploads/2016/12/Local-Nuisance-Ordinances-and-the-Fair-Housing-Act.pdf](http://www.equalhousing.org/wp-content/uploads/2016/12/Local-Nuisance-Ordinances-and-the-Fair-Housing-Act.pdf)

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