

FACT SHEET: FAIR HOUSING, ZONING & LAND USE



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What is fair housing?

Fair housing is the right to choose housing free from unlawful discrimination. The federal Fair Housing Act (FHA) and Michigan laws protect people from discrimination in housing based on the following *protected classes*: race, color, religion, sex, national origin, familial status, disability, marital status, and age. 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 FHA 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 FHA prohibits discrimination in a *dwelling* which means “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 FHA’s regulations and cannot be based upon the protected class (i.e. race, religion, disability, etc.) of the residents or prospective residents. The FHA 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.

What is a reasonable accommodation?

Reasonable accommodations, as defined by the FHA, are changes in rules, policies, or practices that are necessary to afford persons or groups of persons with disabilities equal opportunity to use and enjoy housing. The FHA requires municipalities to make reasonable accommodations in land use and zoning policies and procedures. Reasonable accommodations provide a means of requesting from the local government flexibility in the application of land use and zoning regulations, or, in some instances, even a waiver of certain restrictions or requirements.

For example: a zoning board grants an accommodation to designate a group of individuals with disabilities who intend to live together in a group or recovery home as a “family” so as to allow more unrelated adults in a single family home than normally permitted under zoning restrictions.

Approving New Housing Developments

Placement of new or rehabilitated housing for lower-income people is one of the most controversial issues communities face. If fair housing objectives are to be achieved, the goal must be to avoid high concentrations of low-income housing and to approve housing developments that will promote integration. A municipality considering a proposal from an independent housing developer or provider to provide integrated housing within the municipality’s jurisdiction must **not** deny the housing without careful consideration of the need for new integrated housing opportunities in the vicinity of the developer’s proposed project and the degree of residential segregation in that community in light of the population demographics in the overall metropolitan area.

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 of 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. Further, in Michigan, a definition of family cannot be restrictive on the basis of marital status, and cannot define family as persons “related by blood, marriage or adoption”.

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 from moving into certain neighborhoods and suburbs. Such strict zoning restrictions limit the affordability and number of rental multifamily housing 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 had 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.

Regional Planning

For jurisdictions located in metropolitan areas, serious consideration should be given to ways they can participate in cooperative, inter-jurisdictional planning for construction of assisted housing.