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Webinar Series for Comprehensive Plan Updates

Creating a Local Fair Housing Policy

Presented by Jonathan Stanley & Lael Robertson
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What We’ll Cover

- Fair Housing (FH) background
- Applicability & Protected Classes
- Potential impediments to FH
- What goes into a FH Policy
- Crafting the right policy
- Additional information
Fair Housing Act Background

• Title VIII of the Civil Rights Act of 1968
• Amended in 1974 & 1988
• Enforced by HUD & overseen by HUD’s Office of Fair Housing & Equal Opportunity (FHEO)
Who Must Abide by the Law?

- Insurance Companies
- Property Managers
- Government Entities
- Listing Services
- Landlords
- Brokers
- Sales Agents
- Builders & Developers
- Property Sellers
- Owners
- Contractors
- Mortgage Lenders
- Condo Associations
- Basically everyone

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Generally Speaking . . .

Unlawful to take adverse action in housing because of protected class status

1) Disparate Treatment
2) Disparate Impact
3) Failure to affirmatively further Fair Housing
Disparate Treatment

When a housing provider treats a member of a protected class differently from other persons

- Refusal to rent
- Different terms and conditions
- Steering
- Advertising
- Coercing, threatening or intimidating for enforcing rights
- Failure to allow a reasonable accommodation
Disparate Impact Doctrine

Allows for a remedy when practice may be neutral on its face but has an unjustified adverse effect on members of a protected class

Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.
Protected Class Status – FHA

- Race or color
- Religion
- Sex
- Familial Status
- National Origin
- Disability

42 U.S.C. §3604(a)
Minnesota Human Rights Act
Minn. Stat. §363A

Adds

• Creed
• Marital status
• Status with regard to public assistance
• Sexual orientation
Applicability of Fair Housing Laws

- All residential sale and rental activities
- Limited exemptions
- Additional responsibilities (e.g. must produce an analysis of impediments)
Fair Housing Complaint Process

Anyone (individual or entity) can file at no cost

Must file complaint within 1 year of occurrence

Federal or state enforcement agency acts as neutral and impartial fact finder

Results in ‘no cause’ or ‘reasonable cause’ finding

If reasonable cause, attempt to negotiate a settlement is made

If settlement unsuccessful, may lead to hearing before administrative law judge or to litigation
**SHORT Statute Of Limitations**

- **Administrative Complaints**
  - One year from date of last discriminatory incident

- **Court Complaints**
  - Claims under the FHA – 2 years
  - Claims under the MHRA – 1 year

- Filing with an administrative agency *tolls* the respective jurisdiction’s Statute of Limitation
Purpose of the rule is to: “incorporate, explicitly, fair housing planning into existing planning processes, the consolidated plan, and the PHA plan, which in turn, incorporate fair housing priorities and goals more effectively into housing and community development decision-making.”
Fair Housing Implementation Council

- Coordination
- Analysis of Impediments (AI)
- Local Governments & Metropolitan Council
Potential Impediments to Fair Housing

• Resistance to development
• Insufficient curb cuts
• Lack of accessible housing
• Restrictions on modifications
Potential Impediments to Fair Housing

- Lack of large rental units
- Zoning
- Minimum lot/home sizes or parking requirements
- Geographic concentration of low- and very low-income persons
- Concentration of assisted housing
Potential Impediments to Fair Housing

• Insufficient multi-lingual marketing efforts
• Restrictive definitions of family
• Restrictions on accessory dwellings or manufactured/mobile homes
Fair Housing Policies for All Communities

- Our communities are changing
- Clarifies ‘chain of command’ when fair housing complaints arise
- Can protect municipality from liability
- Can help staff be prepared when they receive questions
- Improves municipality’s position when vying for Metropolitan Council funding
Key Elements of a Fair Housing Policy

External Components
- Complaint ID and Referral
- Meaningful Access
- Additional Policies

Internal Components
- Training
- Project Planning
- Ongoing Analysis
- Community Engagement
- Affirmatively Furthering Fair Housing (AFFH)
Purpose & Policy Statement

Purpose and Vision
- External statement of the City’s commitment
- Doesn’t have to be long
- The “Why”

Fair Housing Policy Statement
- Statement by the City to abide by the specific fair housing laws
- Sets the stage for the specifics in the policy
External: Providing Access

City is the first place many go

City Hall  Website

From 2014 – 2017

HUD: 46 – 57 Complaints  MDHR: 185 complaints  Legal Services: 650 complaints
External: Complaint I.D. / Referral

• Step 1 – Fair Housing Officer
  • Receives FH complaints
  • Tracks them in fair housing log
  • Provides referral information and FH educational material in a timely manner
External: Complaint I.D. / Referral

• Step 2 – Receiving Complaints
  • Phone number and/or online portal
  • Notice of right to request an interpreter and/or information in the resident’s language
    • Federal Fund Recipients Limited English Proficiency (LEP)
    • Avoid disparate impact claims
External: Complaint I.D. / Referral

• Step 3 – Referral Procedure
  • Identification of enforcement bodies that serve community
  • Expectation of timelines for referrals
  • Tracking of referrals in FH log
External: Additional Policies

- Listing of additional policies available:
  - ADA
  - Reasonable Accommodation
  - Limited English Proficiency (LEP)
  - Olmstead Plan
External: Additional Practices

- Fair Housing Commission
- Fair Housing Ordinances
  - Could add additional protected classes
Internal: City Directive on Fair Housing

All Departments

- Police
- Inspection
- Economic Development
- Community Development
- Licensing
Internal Activities: Staff Training

- Commitment by the city
  - Front desk/reception staff
  - Housing/Community Development Department
  - Inspections
  - Police
  - Elected Officials
  - Public Health Staff
Internal: Project Planning

- Commitment that city will use fair housing analysis when planning and investing in housing or community development projects

- Proactive tackling and documenting of these considerations may avoid claims of disparate impact or failure to AFFH
Internal: Project Planning

- Increase or reduce
- Displacement
- Disparate impact
- Community engagement
- Racial and economic segregation
- Comprehensive Plan Goals
Planning: Best Practice

• Fair Housing/Equity Tool/Rubric
1. Housing Analysis

- Inventory of housing, including age and rental cost
- Examination of areas of concentrated poverty and wealth
- Renter/homeowner disparities based on racial and familial makeup
Internal: Ongoing Analysis

2. Code/Ordinance Analysis

- Zoning code
- Building code
- Occupancy standards
- Crime Free Ordinances
- Occupancy limits
- Definitions of Family
- Spacing requirements for group homes
Internal: Engagement

- Commitment by the City
- Underrepresented Voices
Internal: Engagement

Tools to assist in community engagement include:

• Public meetings, workshops and office hours
• Creating ongoing or project-based steering committees
• Appointment of community members
Recipients of federal funds for housing or urban development are required to affirmatively further fair housing –

“to assess the elements and factors that cause, increase, contribute to, maintain, or perpetuate segregation, racially or ethnically concentrated areas of poverty, significant disparities in access to opportunity, and disproportionate housing needs.”

AFFH Final Rule
Other Things to Consider

• Develop strategy to raise Housing Choice Voucher acceptance rate
• Promote & conduct events for Fair Housing Month each April
• Develop strategies on overcoming NIMBY-ism
Other Things to Consider

• Consider expedited review for affordable projects in high opportunity locations
• Ensure long-term plans encourage mixed-income housing
• Integrate FH in programs & activities
• Require affirmative FH marketing plan (AFHMP) for city approvals
• Consider including fair housing content in your Comprehensive Plan Update
Adopting the Right Policy

- Budget?
- Organizational structure?
- Capacity?
- Priorities?
Steps in Policy Development

• Secure Buy-in
• Ensure participation
• Discuss features
• Use model template
• Reach out for assistance
Fair Housing & LCA Programs

• Affirmative Fair Housing Marketing Plans

• Adoption of policy

• Consistent with *Thrive MSP 2040 & the 2040 Housing Policy Plan*
Concluding Thoughts

• Strengthen Local Fair Housing
• Scalable & adaptable
• Resources
Resources

http://metrocouncil.org/Handbook

HUD Housing Discrimination Hotline: 1.800.669.9777 (TTD 1.800.927.9275)

Minnesota Department of Human Rights: 651.539.1100 or 800.657.3704 (TTY 651.296.1283)

Dbe: 612.728.5767 or 866.866.3546

Mid-Minnesota Legal Aid: 612.334.5970

Housing Justice Center: 651.642.0102
Questions?

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Thank You!