

Housing Persons with Disabilities in the Face of Community Opposition: A Public Official's Guide to Fair Housing

This Guide aims to help local officials who may be left in tough decision-making roles to understand and fulfill their legal duties under fair housing laws to advance housing for persons with disabilities.

Local Officials Have a Legal Duty to Ensure Fair Housing.

WHAT IS REQUIRED? Local governments and their public officials (including but not limited to county officials, council members, zoning commissioners, and city staff) must comply with fair housing laws when making decisions that have an impact on the development of affordable housing serving persons with disabilities or other protected classes.

Fair housing law covers decisions relating to funding, zoning, special-use permits, and other land use decisions. Legal compliance is crucial for local governments to avoid serious sanctions, including loss of future federal funding or repayment of past funding; significant monetary and punitive damages; involvement by the U.S. Department of Justice and other federal agencies; and court-ordered remedial action. 42 U.S.C. §§ 3601 *et seq.*; Tex. Prop. Code §§ 301.001 *et seq.*

WHO IS PROTECTED? Fair housing law makes it illegal to discriminate against or to enforce policies that have the effect of discriminating against persons in the sale or rental of a dwelling unit because of a person's disability.

"Persons with disabilities" includes those with a "physical or mental impairment which substantially limits one or more of such person's major life activities" or with a history of such impairment, including homeless persons suffering from mental illnesses and recovering addicts. 42 U.S.C. §§ 3604(a), (b), (f)(1)-(2); Tex. Prop. Code § 301.003(6).

Three Rules for Fulfilling Fair Housing Legal Duties.

RULE #1. DO NOT DISCRIMINATE. Decisions touching on funding, location, or operation of housing must not have a discriminatory intent (based in part on a discriminatory motive) or discriminatory impact (when an otherwise neutral policy has a more burdensome effect) on persons with disabilities.

A public decision maker "has a duty not to allow illegal prejudices of the majority to influence the decision making process." *Assoc. of Relatives & Friends of AIDS Patients v. Regulations & Permits Admin.*, 740 F. Supp. 95, 104 (D.P.R. 1990). Opposition to supportive housing projects is often based on hidden prejudices veiled in broad, unsubstantiated complaints. Local officials must beware the myths and stereotypes surrounding supportive housing. Recognizing illegal prejudices in these complaints helps local officials avoid violating the Fair Housing Act.

→ Myth: "This development will increase crime in our neighborhood."

→ Myth: "Allowing these people to live here will lower my property values."

RULE #2. DO GRANT REQUESTS FOR ACCOMMODATIONS. Requests for accommodation must be granted to modify land use laws and other policies that entirely exclude persons with disabilities from residential neighborhoods or give them less opportunity to live in certain areas compared to persons without disabilities.

The Fair Housing Act requires that such requests be granted unless: (1) the request imposes an undue burden or expense on the local government; or (2) the proposed use creates a fundamental alteration in the zoning scheme or other program. Courts have sanctioned local governments that denied the following requests:

→ Adult foster home requested waiver of six-person occupancy limit in order to operate a home for nine residents. *Smith & Lee Assoc. v. City of Taylor*, 102 F.3d 781 (6th Cir. 1996).

→ 16-bed homeless shelter requested special use permit to operate in a single-family zoning district. *Turning Point, Inc. v. City of Caldwell*, 74 F.3d 941 (9th Cir. 1996).

→ Request to convert motel into a single room occupancy development for persons with disabilities. *Judy B. v. Borough of Tioga*, 889 F. Supp. 792, 799-800 (M.D. Pa. 1995).

RULE #3. DO AFFIRMATIVELY FURTHER FAIR HOUSING. The U.S. Department of Housing and Urban Development and all recipients of federal housing funds (CDBG, ESG, HOME, or HOPWA), including the State and all of its subrecipient jurisdictions and local governments, must take affirmative steps to further fair housing choices for persons with disabilities and other protected classes. Recommended actions for communities to undertake include:

Eliminate NIMBY (Not in My Backyard) neighborhood opposition to supportive housing development based on prejudices against persons with disabilities. In addition to community-wide education, public officials should consider the following affirmative steps:

- Adopt a mediation program to engage and educate neighbors about their fears and misunderstandings;
- Eliminate formal and informal “super majority” voting requirements that allow just one or two elected representatives to hold veto power over a project; and
- Adopt a Fair Share Policy to expand housing choice for persons with disabilities in all neighborhoods.

Provide a broad variety of accessible housing for persons with disabilities throughout the jurisdiction in an integrated setting. To avoid significant liability, public officials should be working on a regular ongoing basis to:

- Assess the housing needs of persons with disabilities living in the community;
- Identify barriers to meeting those needs; and
- Outline affirmative steps that the local government and its officials commit to undertake to overcome those barriers.

Provide technical and procedural assistance to supportive housing and other affordable housing providers who face barriers to creating new housing opportunities. Examples of government efforts to promote supportive housing development include:

- Streamline permitting and review processes;
- Create financial incentives and assist in identifying additional funding resources; and
- Create high opportunity target zones for supportive housing development.

What Should Local Officials Do To Ensure Fair Housing Compliance?

State and local officials must determine the most appropriate means for ensuring that actions are non-discriminatory and affirmatively further fair housing choices for persons with disabilities. *Every official is responsible for ensuring all legal requirements are met.*

Educate. Engage in education, training, and public outreach on the community-wide benefits from increased housing opportunities for persons with disabilities and actively rebut commonly-held stereotypes.

Plan. Promote meaningful community planning and engagement to ensure an adequate supply of quality supportive housing that provides persons with disabilities housing choices throughout the jurisdiction.

Facilitate. Provide technical and procedural assistance to supportive housing and other affordable housing providers that face barriers to creating new housing opportunities.

Assess and Remediate. Examine what types of government regulations are hampering the development of supportive housing for persons with disabilities, and take proactive steps to eliminate these barriers.

This Guide reflects the opinions of the William Wayne Justice Center for Public Interest Law only, not any official position of the School of Law or of the University of Texas. Additional research support generously provided by the Community Development Clinic at the UT School of Law.