BPDA - Affirmatively Furthering Fair Housing

Zoning Amendment

December 17, 2020 | BPDA Board Meeting
What is Affirmatively Furthering Fair Housing?
On January 5, 2018 HUD issued a Notice in The Federal Register extending the deadline for submission of local government Assessments Fair Housing (AFH) to the next program year after October 31, 2020 and HUD suspended submission and review of all AFHs not already approved.

In May, HUD moves to remove the federal mandate and places control over AFFH efforts with local cities and towns. The local Assessing Tool removed and AFH requirement unclear/delayed.

**Civil Rights Act of 1964**

*President Lyndon Johnson signs the Civil Rights Act of 1964, legislation to end discrimination based on race, color, religion, or national origin.*

**Civil Rights Act of 1968, Title VIII-IX: Fair Housing Act**

*Intended to protect the buyer or renter of a dwelling from seller or landlord discrimination, this act makes it unlawful to refuse to sell, rent, or negotiate with any person because of that person’s inclusion in a protected class.*

**Affirmatively Furthering Fair Housing (AFFH) Rule**

*HUD promulgates the AFFH rule, requiring cities which receive federal funding for housing/urban development to examine whether there are any barriers to fair housing, housing patterns or practices that promote bias based on any protected class, and to create a plan for rectifying fair housing barriers. Required cities to produce Assessment of Fair Housing (AFH) and offered a Local Government Assessing Tool.*

**HUD moves to remove AFFH Provision**

*In May, HUD moves to remove the federal mandate and places control over AFFH efforts with local cities and towns. The local Assessing Tool removed and AFH requirement unclear/delayed.*
Boston’s Draft Assessment of Fair Housing (AFH)

The City of Boston is currently reviewing a draft AFH in conjunction with an AFH Advisory Committee.

14 goals and 100+ actions across city agencies.

Although the AFH is no longer a federal requirement, the City remains committed to completing a locally tailored fair housing plan and is in the process of reviewing a final draft.
July 28, 2020

Mayor Marty Walsh
@marty_walsh
Jul 28

Housing is a human right. The only way to battle decades of racist housing policies like redlining is to undo them.

1:25 PM - Jul 28, 2020 - Twitter Web App

Mayor Marty Walsh
@marty_walsh
Jul 28

In Boston, we will not waver in our commitment to fair housing.

7 46 304

Mayor Marty Walsh
@marty_walsh
Jul 28

We are dedicated to helping residents access housing, and have a fair shot at owning a home.

3 17 172

Mayor Marty Walsh
@marty_walsh
Jul 28

We hold bankers, lenders, property owners and landlords accountable.

4 13 161

Mayor Marty Walsh
@marty_walsh
Jul 28

We make sure residents know their rights. We are working with fair housing advocates on a plan to guide our work moving forward.

1 11 127

Mayor Marty Walsh
@marty_walsh

We will also be filing a zoning amendment that we believe will make Boston the first American city with fair housing requirements written into our zoning code.

1:25 PM - Jul 28, 2020 - Twitter Web App
taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.

Specifically, affirmatively furthering fair housing means **taking meaningful actions** that, taken together, **address significant disparities** in housing needs and in access to opportunity, **replacing segregated living patterns** with truly **integrated** and **balanced** living patterns, **transforming** racially and ethnically concentrated areas of poverty **into areas of opportunity**, and fostering and maintaining **compliance with civil rights and fair housing laws**. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development.

as provided in 24 CFR 5.152
Assessment of Fair Housing (AFH)
the analysis undertaken pursuant to § 5.154 that includes an analysis of fair housing data, an assessment of fair housing issues and contributing factors, and an identification of fair housing priorities and goals, and is conducted and submitted to HUD using the Assessment Tool. The AFH may be conducted and submitted by an individual program participant (individual AFH), or may be a single AFH conducted and submitted by two or more program participants (joint AFH) or two or more program participants, where at least two of which are consolidated plan program participants (regional AFH).
108+ AFFH Actions: City Agencies

- Age Strong Commission
- Boston Housing Authority
- Boston Planning & Development Agency
- Boston Police Department
- Boston Public Health Commission
- Boston Public Schools
- Commission for Persons with Disabilities
- Department of Neighborhood Development
- Health and Human Services
- Intergovernmental Relations
- Office of Economic Development
- Office of Fair Housing and Equity
- Office of Resilience and Racial Equity
- Office of Workforce Development
City’s Draft Assessment of Fair Housing (AFH) Plan

Increase Housing Availability and Accessibility for Older Adults and People with Disabilities

Expand Housing Choice for Voucher Holders

Use Zoning as a Fair Housing Tool (First in the nation)

Develop Practices across Agencies that Instill the Use of an Equity Lens

Address Discrimination Against LGBTQIA People and Create LBTQIA Inclusive Housing Opportunities

Increase Resources for Housing and Homelessness

Build and Strengthen Regional Strategies to Create Housing and Further Fair Housing

Reduce the Disparity in Homeownership Rates by Race and Ethnicity

Promote Equitable Access to Housing and Reduce and Eliminate Discrimination, Both Intentional and Non-intentional

Redevelop and Preserve Existing Public and Income Restricted Housing

Create Healthy Homes and Promote Collaboration between Efforts to Address Housing, Health, and Safety

Enhance Fair Housing by Creating Economic Opportunity

Ensure the Equitable Distribution of City Resources Based on Need by Providing Supports for Rent-Burdened Residents and Residents Facing Potential or Actual Displacement

Reduce and Prevent Homelessness

Promote Equitable Access to Housing and Reduce and Eliminate Discrimination, Both Intentional and Non-intentional

Redevelop and Preserve Existing Public and Income Restricted Housing

Ensure the Equitable Distribution of City Resources Based on Need by Providing Supports for Rent-Burdened Residents and Residents Facing Potential or Actual Displacement

Promote Equitable Access to Housing and Reduce and Eliminate Discrimination, Both Intentional and Non-intentional

Redevelop and Preserve Existing Public and Income Restricted Housing

Ensure the Equitable Distribution of City Resources Based on Need by Providing Supports for Rent-Burdened Residents and Residents Facing Potential or Actual Displacement

promote equitable access to housing and reduce and eliminate discrimination, both intentional and non-intentional

redevelop and preserve existing public and income restricted housing

ensure the equitable distribution of city resources based on need by providing supports for rent-burdened residents and residents facing potential or actual displacement

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redevelop and preserve existing public and income restricted housing

ensure the equitable distribution of city resources based on need by providing supports for rent-burdened residents and residents facing potential or actual displacement
AFFH Zoning Proposal for the City of Boston
taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant’s activities and programs relating to housing and urban development.
Boston City Council Working Sessions

- February 27, 2020
- April 22, 2020
- June 19, 2020
- July 14, 2020
- October 8, 2020

Committee on Government Operations on June 19, 2020
Stakeholder Input

- Housing advocates
- Community Members
- NAIOP
- Real Estate Development Community
City Agencies

Boston Planning & Development Agency

Boston Housing Authority

Department of Neighborhood Development

Mayor's Commission for Persons with Disabilities

Office of Housing Stability

Office of Fair Housing and Equity
Goals

For proposed projects to take meaningful actions to address displacement and provide further access to housing in a way that is:

- Clear
- Consistent
- Predictable
- Fair

BOSTON TO BECOME FIRST MAJOR CITY IN THE NATION TO INCLUDE FAIR HOUSING REQUIREMENTS IN ZONING CODE

Zoning amendment represents one step in City's efforts to strengthen fair housing practices

December 9, 2020
Development Review Process

Development Review processes:

- **Inspectional Services Dept; Zoning Relief and Design Review as required**
- **Article 80-E Small Project Review**
  - <20,000 SF
  - Fewer than 15 dwelling units
- **Article 80-B Large Project Review**
  - Between 20,000 and 50,000 SF
  - 15+ dwelling units
- **Article 80-C PDA Review**
  - 50,000+ SF
  - Change of use of 100,000+ SF
- **Article 80-D IMP Review**
  - 1+ acre
  - Location restricted by neighborhood zoning articles
  - Hospitals, colleges and universities

Hospitals, colleges and universities
Article 80 Process with AFFH

Stage I: Pre-file Stage
- Voluntary community outreach by proponent(s)
- BPDA Pre-file meeting(s)
- LOI submitted
  - BPDA Article 80 process begins
- PNF submitted
  - Includes Accessibility Checklist, Smart Utilities Checklist, and AFFH Assessment
- IAG creation

Stage II: Under Review Stage
- Ongoing Interagency FH Development Committee Review
- Public Meeting
- IAG Meeting
- Scoping Session
- BCDC Review
- If not ready for BPDA Board Meeting
- Preliminary Adequacy Determination issued
- PDA submitted
  - PDIPIR submitted
- BPDA Review

Stage III: Post BPDA Board Approval Stage
- Building Permit
  - Certificate of Compliance/Consistency
  - Stamped construction drawings
  - BPDA Design Review
- Cooperation Agreement
  - Affordable Housing Agreement (AHA)
  - Boston Residents Construction Employment Plan (BRCEP)
  - Development Impact Project (DIP) Agreement
- Zoning Commission Hearing
  - if applicable
- Board of Zoning Appeals Hearing

Stage IV: Construction and Completion (post-BPDA processes)
- OFHE/BPDA
  - Affirmative Fair Marketing Plan Signed
  - 6 months before lease up/sales
- DND
  - Affirmative Fair Housing Marketing Begins
  - 6 months before construction completion
- Project Completion:
  - Certificate of Completion issued
  - Lease Up/Sales
Accessibility and Smart Utilities Checklists

The zoning amendment encodes the Accessibility Checklist and Smart Utilities Checklist as a requirement to be included with a Proposed Project’s filing.

Accessibility Checklist

BPDA board approved in June 2014, updated in March 2017 and Nov 2019

<table>
<thead>
<tr>
<th>Article 80</th>
<th>ACCESSIBILITY CHECKLIST – Updated October, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Project Information:</td>
<td>Year Name and Title:</td>
</tr>
<tr>
<td>If this is a multi-phased or multi-building project, fill out a separate checklist for each phase/building.</td>
<td></td>
</tr>
<tr>
<td>Project Name:</td>
<td></td>
</tr>
<tr>
<td>Project Administrator:</td>
<td></td>
</tr>
<tr>
<td>Total Number of Phases/Buildings:</td>
<td></td>
</tr>
<tr>
<td>Primary Contact:</td>
<td></td>
</tr>
<tr>
<td>Phone:</td>
<td></td>
</tr>
<tr>
<td>Email:</td>
<td></td>
</tr>
<tr>
<td>Owner/Developer:</td>
<td></td>
</tr>
<tr>
<td>Architect:</td>
<td></td>
</tr>
<tr>
<td>Civil Engineer:</td>
<td></td>
</tr>
<tr>
<td>Landscape Architect:</td>
<td></td>
</tr>
<tr>
<td>Code Consultant:</td>
<td></td>
</tr>
<tr>
<td>Accessibility Consultant(s) (if you have one):</td>
<td></td>
</tr>
<tr>
<td>Who made the project on the clarify checklist is being filled out?</td>
<td></td>
</tr>
<tr>
<td>What is your project’s site plan? What checklist is your project on the clarify checklist is being filled out?</td>
<td></td>
</tr>
<tr>
<td>This section identifies preliminary construction information about the project including size and use.</td>
<td></td>
</tr>
<tr>
<td>Site Area:</td>
<td>Building Area:</td>
</tr>
<tr>
<td>GSA:</td>
<td></td>
</tr>
<tr>
<td>% of floor area:</td>
<td></td>
</tr>
<tr>
<td>% of site area:</td>
<td></td>
</tr>
<tr>
<td>What is the construction classification?</td>
<td></td>
</tr>
<tr>
<td>New Construction</td>
<td>Renovation</td>
</tr>
<tr>
<td>Do you anticipate being non-compliant with the NAAM (_Date in Administrative Review Board for non-compliance with NAAM):</td>
<td></td>
</tr>
<tr>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>If yes, the reason for non-compliance:</td>
<td></td>
</tr>
<tr>
<td>If technical difficulty, inability to achieve compliance without substantial cost.</td>
<td></td>
</tr>
<tr>
<td>If you meet with an accessibility consultant or Building Commissioner to try to achieve compliance rather than applying for a variance/exception:</td>
<td></td>
</tr>
</tbody>
</table>

Smart Utilities Checklist

BPDA board approved in June 2018

Boston Planning & Development Agency

Smart Utilities Policy for Article 80 Development Review - 2018

The Boston Planning & Development Agency ("BPDA") has worked in close collaboration with numerous internal and external stakeholders – the Mayor’s Office of Streets, Transportation and Sanitation, the Mayor’s Office of Environment, Energy and Open Space ("OEOS"), the City of Boston Department of Information Technology ("DOIT"), the City of Boston Public Works Department ("DPW"), the Public Improvement Commission ("PIC"), the Boston Water and Sewer Commission ("BWSC"), and the City of Boston Transportation Department ("BTD") – to develop a new model for integrated planning among energy, transportation, water, and communications utilities. The resulting Boston Smart Utilities Vision project ("SLU project") aims to transform and improve the "business-as-usual" model of utility design, planning, and coordination. With coordinated planning and improved technologies, utility services can be made more affordable, resilient, equitable, and sustainable.

Four key products of the two-year-long SLU project include a Baseline Report, a Cost Benefit Analysis, the Smart Utility Standards, and a new policy calling for the incorporation of Smart Utility Technologies ("SUTs") into new developments. The first three of these work products can be found at: http://www.bostonlgas.org/basikingplanning/initiatives/boston-smart-utilities-project. The fourth work product, the Smart Utilities Policy for Article 80 Development Review, is contained herein.

The Baseline Report analyzes the cost of doing "business-as-usual" – namely, planning and constructing utilities for the analytical pilot project area using conventional approaches.

The Cost Benefit Analysis evaluates the financial feasibility of multiple SUTs and concludes that many technologies are financially feasible and cost effective at various scales of real estate development under current market conditions. In addition to the Cost Benefit Analysis, several local, large scale developers were consulted for their opinions about the feasibility of a variety of SUTs.

The Smart Utility Standards set forth guidelines for planning and integration of SUTs with existing utility infrastructure in existing or new streets, including ten (10) SUTs and cross-section, lateral, and intersection diagrams of an ideal layout for underground services in 40’ and 60’ right-of-ways. The Smart Utility Standards are intended to serve as guidelines for developers, architects, engineers, and utility providers for planning, designing, and locating utilities.

The Smart Utilities Policy for Article 80 Development Review presented herein describes which SUTs will be required in new developments of certain size thresholds.
2. Assessment Tool  
To be submitted with Article 80 Filings

AFFH Assessment

Includes:

- Displacement Risk Analysis
- Historical Exclusion
2. Assessment Tool

To be reviewed in Article 80 Filings

Displacement Risk Analysis

- AFFH Assessment Tools
- Zoning Code Amendment
- Implementation Document

Engagement:
- Stakeholder engagement

DRAFT - FOR DISCUSSION PURPOSES ONLY
2. Assessment Tool  To be reviewed in Article 80 Filings

Historical Exclusion

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zoning</td>
<td>25%</td>
</tr>
<tr>
<td>One-family = 1</td>
<td></td>
</tr>
<tr>
<td>Two-family = .5</td>
<td></td>
</tr>
<tr>
<td>Three-family = .1</td>
<td></td>
</tr>
<tr>
<td>Parcel Data</td>
<td>25%</td>
</tr>
<tr>
<td>One-family = 15%</td>
<td></td>
</tr>
<tr>
<td>Two-family = 7%</td>
<td></td>
</tr>
<tr>
<td>Three-family = 3%</td>
<td></td>
</tr>
<tr>
<td>Percent White</td>
<td>25%</td>
</tr>
<tr>
<td>Percent High Income</td>
<td>25%</td>
</tr>
<tr>
<td>(Households with income of</td>
<td></td>
</tr>
<tr>
<td>150K+)</td>
<td></td>
</tr>
</tbody>
</table>
3. Implementation

Boston Interagency Fair Housing Development Committee (BIFDC)

- Boston Planning & Development Agency
- Commission for Persons with Disabilities
- Department of Neighborhood Development
- Office of Fair Housing and Equity
- Boston Housing Authority

Advisory Role

Provide Recommendations to the BPDA board based on Intervention Options

Intervention Options

*Developer to pick one of each*

1. Article 80 Options
   (BPDA Board Approval)

2. Marketing Options
   (Post BPDA Approval)

*Intervention Enhancements*

3. Supplemental Process Options
3. Implementation - Intervention Options (1 each)

1. Article 80 (BPDA Board Approval)
   - Voluntarily provide additional IDP units
   - Deeper affordability of IDP units
   - Higher number of accessible units
   - Higher proportion of family sized units
   - Provide all IDP units on-site
   - Match or exceed family size units in neighborhood
   - Increase density to increase units available to protected classes
   - Any other option

2. Marketing (Post BPDA Board Approval)
   - Preference for % units to rental voucher holders
   - Preference for % units to rent-burdened families
   - Preference to first time home-buyers
   - Allow last month and security deposit to be paid in installments
   - Best practices on use of CORI, eviction, credit record in tenant screening and selection
   - Best practices to market units to protected classes
   - Any other option
### 3. Implementation - Intervention Options

**3 Supplemental Process**

- Local Housing Stabilization Fund
- Voluntarily deed tenants right of first refusal upon conversion
- Voluntarily subsequent owner transfer fee agreement
- Establish or contribute to neighborhood housing Acquisition Opportunity Program
- Restrict % of non-owner occupied units
- Long term flexible lease options for mixed use and local small businesses
- Voluntarily “Flipping fee” agreement
- Any other option

**Intervention Enhancements**

<table>
<thead>
<tr>
<th>Areas of High Displacement Risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diversity preservation preference</td>
</tr>
<tr>
<td>Additional Article 80 process option</td>
</tr>
<tr>
<td>Supplemental Process option</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Areas of High Historical Exclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>All IDP units on-site</td>
</tr>
<tr>
<td>Additional Article 80 process option</td>
</tr>
<tr>
<td>Supplemental Process option</td>
</tr>
</tbody>
</table>

For PDA’s:

- Additional Article 80 process option
- Supplemental Process option
Next Steps

Timeline

▪ December 9: City Council Vote
▪ December 17: BPDA Board
▪ 2021: Boston Zoning Commission

Mayor Marty Walsh @marty_walsh - 46m
Replies to @marty_walsh

I'm pleased to announce that #Boston is expected to become the first city in the nation with fair housing requirements written into its zoning code, following today's @BOSCityCouncil approval.

City Council voted unanimously in favor of a text amendment to the Boston Zoning Code.
Thank you